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# **REPORTS OF CASES**

**ARGUED AND DETERMINED**

**IN**

## **THE COURT OF COMMON PLEAS, ON APPEAL**

**FROM THE DECISIONS OF THE**

**REVISING BARRISTERS,**

**FROM MICHAELMAS TERM, 7 VICT., TO HILARY TERM, 10 VICT.,  
BOTH INCLUSIVE.**

**VOL. I.**

**LONDON :**  
**SPOTTISWOODE and SHAW,**  
**New-street-Square.**

A/- 20.

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BY

ALFRED J. P. LUTWYCHE, M.A.

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

Printed by J. B. L. & Co., 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77, 79, 81, 83, 85, 87, 89, 91, 93, 95, 97, 99, 101, 103, 105, 107, 109, 111, 113, 115, 117, 119, 121, 123, 125, 127, 129, 131, 133, 135, 137, 139, 141, 143, 145, 147, 149, 151, 153, 155, 157, 159, 161, 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 183, 185, 187, 189, 191, 193, 195, 197, 199, 201, 203, 205, 207, 209, 211, 213, 215, 217, 219, 221, 223, 225, 227, 229, 231, 233, 235, 237, 239, 241, 243, 245, 247, 249, 251, 253, 255, 257, 259, 261, 263, 265, 267, 269, 271, 273, 275, 277, 279, 281, 283, 285, 287, 289, 291, 293, 295, 297, 299, 301, 303, 305, 307, 309, 311, 313, 315, 317, 319, 321, 323, 325, 327, 329, 331, 333, 335, 337, 339, 341, 343, 345, 347, 349, 351, 353, 355, 357, 359, 361, 363, 365, 367, 369, 371, 373, 375, 377, 379, 381, 383, 385, 387, 389, 391, 393, 395, 397, 399, 401, 403, 405, 407, 409, 411, 413, 415, 417, 419, 421, 423, 425, 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**J U D G E S**

**OF**

**THE COURT OF COMMON PLEAS**

**DURING THE PERIOD COMPRISED IN THESE REPORTS.**

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**The Right Hon. Sir NICOLAS CONYNGHAM TINDAL,**  
**Knt., L. C. J.**

**The Right Hon. Sir THOMAS WILDE, Knt., L. C. J.**

**The Hon. Sir THOMAS COLTMAN, Knt.**

**The Right Hon. THOMAS ERSKINE.**

**The Hon. Sir WILLIAM HENRY MAULE, Knt.**

**The Hon. Sir CRESSWELL CRESSWELL, Knt.**

**The Hon. Sir WILLIAM ERLE, Knt.**

**The Hon. Sir EDWARD VAUGHAN WILLIAMS, Knt.**



## ADVERTISEMENT.

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THE recent publication, by my friend Mr. David Power, of an excellent little treatise on "The Law of Qualification and Registration of Parliamentary Electors," has induced me to abandon an intention, which I for some time entertained, of prefacing the first volume of these reports by some observations on that branch of law to which the cases reported relate. Any attempt of the kind would now, however, be entirely superfluous.

I cannot let slip this opportunity of publicly expressing my acknowledgments to Mr. John Scott, the learned reporter of the Court of Common Pleas, to whose courtesy in communicating the elaborate written judgments of the late Chief Justice Tindal the greater part of whatever value may attach to this collection of cases is attributable.

A. J. P. L.

*August 15th, 1847.*





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ARGUED AND DETERMINED

1849.

IN THE

## COURT OF COMMON PLEAS

UNDER THE STAT. 6 VICT. c. 18.

IN

MICHAELMAS TERM AND VACATION,

IN THE

SEVENTH YEAR OF THE REIGN OF VICTORIA.

AUTEY, Appellant, and TOPHAM and Another, November 7.  
Respondents.

**S***HEE* Serjt. moved to enter this appeal from the decision of the revising barrister for the borough of *Leeds*. The Master had declined to receive it, upon the ground that no notice had been transmitted to him within the time required by the provisions of the sixty-second section of the stat. 6 *Vict. c. 18*. That section enacts, "That every appellant who shall intend to prosecute his appeal, shall, *within the first four days in the* revising barrister, and therewith also give or send a notice signed by him, stating his intention to prosecute the appeal; and by sect. 64 it is provided, that no appeal shall be entertained, unless such notice shall have been given.

The sixty-second section of the stat. 6 *Vict. c. 18*. requires that the appellant shall, within the first four days of *Michaelmas* term, transmit to the masters of the court the statement in writing, signed by the

Where, therefore, such notice had not been given within the first four days of the term, *Held*, that the Court had no jurisdiction to order the Master to enter the appeal.

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*Michaelmas term* next after the decision to which such appeal shall relate, transmit to the Masters of the said Court of Common Pleas *the statement (a) in writing* so signed by the said revising barrister as aforesaid, and shall *also therewith give or send a notice, signed by him,* stating therein his intention to prosecute the said appeal; and the said appellant shall also give or send a notice, signed by him, to the respondent in the said appeal, stating his said intention duly to prosecute such appeal in the said Court; and *one of the Masters* of the said Court, to be nominated for that purpose by the Lord Chief Justice of the said Court, shall forthwith enter every appeal, *of which he shall have received due notice* from the appellant as aforesaid, in a book to be kept by him for that purpose. Section 64. enacts, "That no appeal, or matter of appeal whatsoever, shall, in any case, except where the conduct and direction of the appeal, or of the answer thereto, shall have been given by order of the Court of Common Pleas, or of any judge thereof, to any person, *be entertained or heard* by the said Court, *unless notice shall have been given* by the appellant to the Masters of the said Court *at the time and in the manner hereinbefore mentioned.*"

*Shee* now submitted, that, as the practice under the statute was quite new, and the appellant was not aware of the necessity of giving the Master notice of his intention to prosecute the appeal, the Court might exercise a discretionary power, and either direct the Master to receive and enter the appeal without notice, or enlarge the time within which notice might be given.

(a) *Vide* sect. 42.

The matter of appeal was one upon which both the appellant and the respondents were anxious to obtain the opinion of the Court, and counsel had been instructed on the behalf of the respondents to consent to the entry of the appeal without the notice. [*Tindal* C. J. The only question is, whether we have jurisdiction.]

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AUTRY  
v.  
TOPHAM.

*Dowling* Serjt. appeared for the respondents, and submitted, that an objection to the reception of the appeal could only be raised by them. If they were ready to receive it, no one else had a right to complain. [*Tindal* C. J. Then the two parties might come to us in the middle of next term.] The words of the sixty-second section of the act were directory rather than compulsory. [*Tindal* C. J. The words of the sixty-fourth section are as plain and direct as can be. We allowed an appeal to be entered yesterday, although it had not been accompanied by a notice to the Master, but our attention had not then been drawn to the prohibitory words in the sixty-fourth clause.]

TINDAL C. J. A new authority has been given to this Court by the legislature, and we must be careful to interpret the words of the statute by which it is conveyed, so as not to appropriate to ourselves a larger jurisdiction than it was intended to place in our hands. The very circumstance of jurisdiction having been taken from another tribunal, and transferred to us, ought to make us the more cautious, lest we usurp a jurisdiction which does not belong to us. The question is, have we a right to entertain and hear this appeal? If the case had stood upon the words of the sixty-second section alone, we might, perhaps, have been inclined to hold



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that they were directory only, and have let in the party to prosecute his appeal; but then comes the sixty-fourth section, by which it is provided "that no appeal, or matter of appeal, shall be entertained or heard, unless notice shall have been given by the appellant to the Masters of the Court," in the time and in the manner mentioned in the sixty-second section — words so express and positive, that I do not see how we can by any possibility avoid their operation. It appears to me, that the delivery of the notice to the Master, within the four first days of the term, is a condition precedent to the entertaining and hearing of the appeal; and I cannot help thinking that, upon general principles, it is much wholesomer to adhere to the plain words of a statute, than to give them a forced construction, upon considerations of convenience. In my opinion, therefore, the appellant is too late, and this Court has no jurisdiction to receive and enter his appeal.

COLTMAN J. I am of the same opinion.

ERSKINE J. It is quite impossible to get over the words of the sixty-fourth section.

MAULE J. The notice of appeal required to be given to the Master stands on the same footing as a writ of error from an inferior to a superior court. Unless that writ be sued out within the time required by the practice of the Court, the superior court would have no jurisdiction; and we have none, unless this notice of appeal be given within the first four days of *Michaelmas* term.

Motion refused. (a)

(a) See the next case.

1843.

SIMPSON, Appellant, and WILKINSON, Respondent. *November 7.*

IN this case, which was an appeal from the decision of the revising barrister for the borough of *Peterborough*, the appeal had been *entered* within the first four days of the term, but no notice had been given to the Master signed by the appellant, stating his intention to prosecute the appeal. On the motion of *Clarke* Serjt., the Court had allowed an extension of the time for giving notice to the Master; but the attention of the Court having been called in the preceding case to the words of the sixty-fourth section, the Master was now directed to strike the appeal out.

The Court will not permit an appeal to be entered, unless a notice be delivered to the Master, signed by the appellant, within the first four days of *Michaelmas* term; even where the application for an enlargement of the time for giving the notice is made within the first four days of the term, and an affidavit by the appellant's agent shows that it was not practicable to give the notice within the period required by the act.

*Byles* Serjt., for the appellant, moved to have the appeal re-entered. He contended that the case was distinguishable from that of *Autey v. Topham*, just decided by the Court, inasmuch as the application for an extension of time was made within the first four days of the term. It was moved also upon an affidavit by the clerk to the *London* agent of the appellant's attorney, stating matter of excuse for the non-transmission of the notice within the time mentioned in the sixty-second section. The affidavit having been filed by the Master, it might be considered as a notice given by the appellant within the required period of his intention to prosecute the appeal. He argued, that the words, "signed by him," in the sixty-second section, did not necessarily import that the notice must be signed by the hand of the appellant, and that the signature of an agent was sufficient.

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WILKINSON.

TINDAL C. J. We are bound to construe our new jurisdiction strictly, and the appellant not having given the notice required by the act, the appeal cannot be received.

Motion refused.

November 13. WEBB, Appellant, and The Overseers of BIRMINGHAM, Respondents.

In arguing the appeal, the appellant begins.

THIS was an appeal from the decision of the revising barrister for the northern division of the county of *Warwick*.

*Mellor* appeared for the respondents, and submitted that he was entitled to begin. The statement by the revising barrister was in the form of a case from sessions, and the respondents had to support his decision.

TINDAL C. J. The case is more like an appeal to the Privy Council from the judgment of an inferior court. The appellant must begin.

*F. Robinson*, for the appellant, then began, but after he had stated the case, the Court said that it appeared to them that the statement of the matter of the appeal was deficient in some material facts; and they, therefore, ordered, that it should be remitted to the revising barrister, in order that the case might be more fully stated. (a)

(a) See 6 Vict. c. 18. s. 65.

1843.

TUDBALL, Appellant, and The Town Clerk of  
BRISTOL, Respondent. November 20.

UPON an appeal from the decision of the revising barristers for the city of *Bristol*, the following case was stated for the opinion of the Court:—

“ At a court held in the city of *Bristol*, on the 25th of *September* 1843, before us, *John Tyrrell* and *George Granville Kekewich*, appointed to revise the list of voters in the election of members of parliament for the said city, *William Tudball* objected to the name of *John Jenkins* being retained in the list of the freemen entitled to vote in the election of members for the said city. Notice of objection was proved to have been duly served, which notice was signed ‘ *William Tudball, of Hotwell Road, on the list of voters for the parish of Clifton.*’ The name of *William Tudball* was not upon either the householder’s or freeholder’s list of voters for the parish of *Clifton*; but his name was on the alphabetical ‘ list of the freemen of the city of *Bristol*;’ and there, under the letter T., he and several others were consecutively stated as ‘ all of the parish of *Clifton*,’ as will appear by the said list sent herewith, and forming part of this case, and signed by us, and marked A. It was objected, on behalf of the said *John Jenkins*, that *William Tudball*, instead of stating himself in the notice to be on the list of voters for the parish of *Clifton*, ought to have stated himself to be on the list of freemen of the city of *Bristol*, and we, being of this opinion, decided that the notice was insufficient, and did not require the said *John*

A notice of objection signed by *W. T.*, describing himself to be “ on the list of voters for the parish of *Clifton*,” where his name did not appear, being only on the alphabetical list of the freemen of the city of *Bristol*, in which he was stated to be “ of the parish of *Clifton* :”  
Held, insufficient.

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*Jenkins* to prove his qualification, but retained his name upon the said list.”

The case also contained a statement by the revising barristers that they had come to the same decision upon similar notices, served upon fifty-three other persons, whose names were set forth, with their qualifications, in two other lists, marked B. and C., annexed to the case. These appeals were consolidated with that upon the vote of *John Jenkins*.

The case was argued by

*Cockburn* for the appellant. The notice of objection is sufficient. The seventeenth section of the Registration of Voter's Act, 6 *Vict. c. 18.*, provides, “That every person whose name shall have been inserted in any list of voters for any city or borough may object to any other person, as not having been entitled on the last day of *July* next preceding to have his name inserted in any list of voters for the same city or borough; and every person so objecting shall, on or before the 25th day of *August* in that year, give, or cause to be given, a notice according to the form numbered (10.) in the said schedule (B.), or to the like effect, to the overseers who shall have made out the list in which the name of the person so objected to shall have been inserted; or if the person objected to shall have been inserted in the list of freemen of any city or borough, except the city of *London*, then to the town-clerk of such city or borough; and every person so objecting shall also give, or cause to be left at the place of abode of the person objected to, as stated in the said list, a notice, according to the form numbered (11.) in the said schedule (B.); and every notice of objection shall be signed by the person

objecting." The form No. 11. (a) has been literally followed by the objector; and although it is true that he was not upon "the list of voters for the parish of *Clifton*," yet the case finds that in the list of freemen for the city of *Bristol*, where his name appears, he is described as "of the parish of *Clifton*." The schedule does not contain any form which is strictly applicable to notices of objection by freemen, and the objector has, therefore, followed the general form which is given in No. 11. of schedule (B). He has described himself of the place of abode which the town-clerk has set opposite to his name in the list of freemen of the city of *Bristol*; and there can be no doubt that if the notice of objection had stopped short at "*William Tudball, of Hotwell Road*," it would have been good. The addition of words which he was not required to insert is mere surplusage, and could not have misled the party objected to. [*Maule J.* He might look into the list of voters for the parish of *Clifton*, and not find the name of the party objecting, and then he would not trouble himself any more about the matter.] The Court will not hold the party to the same strictness as in pleading, when the notice supplies the person objected to with information of the objection.

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*C. Austin*, for the respondent, was not called upon by the Court.

(a) To Mr. —,

I hereby give you notice, that I object to your name being retained on the list of persons entitled to vote in the election of members [or, a member] for the city [or borough] of —. Dated this — day of —.

(Signed)                      *A. B.* of [*Place of abode*],  
On the list of voters for the parish of —.

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BRISTOL.

TINDAL C. J. This appears to me to be the case of a misdescription, in which the party objecting has followed the form given in the act much closer than he need have done, and has followed it falsely. He has described himself as being upon the list of voters for the parish of *Clifton*, his name being, in fact, upon another list, namely, upon the list of the freemen of the city of *Bristol*. We cannot hold such a notice of objection sufficient, as, where the lists of voters are numerous, it would throw greater difficulty upon the claimant in searching for the objector than the act intended to impose.

Decision affirmed.

November 20.

WHITMORE, Appellant, and The Town Clerk of  
WENLOCK, Respondent.

A cow-house, or stable, substantially built of stone, the roof of which is tiled, having a door with a lock and key, and being suitable for the purpose for which it is used, and also conveniently placed for the occupation of the claimant's land, is a building within the meaning of the words "other building," in the 27th section of the Reform Act.

THIS was a consolidated appeal from the decision of the revising barrister for the borough of *Wenlock*, who stated the following case :—

"Borough of *Wenlock*, } At a court held before me,  
in the county of *Salop*. } *John George Phillimore*, the  
barrister duly appointed to revise the lists of voters for the borough of *Wenlock*, in the county of *Salop*, on the 27th day of *October* 1843.

"In the list of persons claiming to vote in the election of members for the borough of *Wenlock*, in respect of property situate within the parish of *Beckbury*, in the said borough, made out by the overseers of the poor of the said parish on the 31st day of *July* 1843, appears the following entry; namely,—

Name.	Place of Abode.	Nature of Qualification.	Where situate.
Thomas Charlton Whitmore.	Beckbury Brook.	Building and land.	Beckbury Brook.

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WENLOCK.

“The said *Thomas Charlton Whitmore* was duly objected to by *William Heaford*, and appeared in support of his vote; and having proved that he was in all other respects a duly qualified voter for the said borough, the only question was, whether the building for which he claimed to vote was sufficient within the statute. The building to which the objection applied consisted of a cow-house or stable, substantially built of stone, the roof of which was tiled, having a door with a lock and key. It was proved also that the building was substantial, and suitable for the purpose for which it was erected and used, and conveniently placed for the occupation of the plaintiff’s land. After hearing arguments on both sides, I decided that the building was not one to which the words ‘other building,’ in the 2 *W. 4. c. 45. s. 27.* could apply, and expunged the name of the voter, which is to be restored, if the Court of Common Pleas be of opinion that the building was such as entitled the claimant to vote.”

*C. Austin* appeared on behalf of the appellant; but the Court called on

*Manning* Serjt. to support the decision. There are two grounds upon which it is contended that the decision of the revising barrister was correct, and that this is not a building within the meaning of the twenty-seventh section of the Reform Act. The “other building” must be taken to be *ejusdem generis* with those



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enumerated in the section, and it must not be ancillary to the occupation of the land. The case is important in both points of view. If the appellant be right, the party will be bound to claim for the borough, and not for the county; if, on the other hand, the Court should agree with the argument for the respondent, the party will not be deprived of his county vote. If the decision of the revising barrister restrains the franchise on the one hand, it enlarges it on the other. The first question, then, is, whether a cow-house or stable, such as the case describes, falls within the words "other building" in the twenty-seventh section of the stat. 2 W. 4. c. 45. By that section it is enacted, "That in every city or borough which shall return a member or members to serve in any future parliament, every male person of full age, and not subject to any legal incapacity, who shall occupy, within such city or borough, or within any place sharing in the election for such city or borough, as owner or tenant, *any house, warehouse, counting-house, shop, or other building*, being, either separately, or jointly with any land within such city, borough, or place, occupied therewith by him as owner, or occupied therewith by him as tenant under the same landlord, of the clear yearly value of not less than 10*l.*, shall, if only registered according to the provisions hereinafter contained, be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough." In order, therefore, to confer the right of voting upon the occupier, the building must be *ejusdem generis* with those mentioned in the section, viz. "house, warehouse, counting-house, or shop." It must be such an one as can be used for the purposes of trade. It may be a brewhouse, a bakehouse, or a malthouse,

or other building of a similar nature. The principle that, where general words in an act of parliament follow particular words, they must be construed as applicable to subject-matter *ejusdem generis*, was laid down by the Court of Queen's Bench in the case of *Sandiman v. Breach*. (a) There Lord Tenterden C. J., in giving judgment, says, "It was objected that the plaintiff in this case could not recover, because the contract (for the breach of which the action was brought) was to have been performed on the Sabbath day, and that it could not legally be performed on that day. But upon looking into the statutes 3 Car. 1. c. 1. and 29 Car. 2. c. 7., we are of opinion that this case does not fall within them. By the 3 Car. 1. c. 1., it was enacted, 'that no carrier with any horse, nor waggon-man with any waggon, nor carman with any cart, nor wain-man with any wain, nor drover with any cattle, shall, by themselves or any other, travel on the Lord's day.' And by the 29 Car. 2. c. 7., 'that no tradesman, artificer, workman, labourer, or other person or persons, shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's day.' It was contended that, under the words 'other person or persons,' the drivers of stage-coaches are included. But where general words follow particular ones, the rule is, to construe them as applicable to persons *ejusdem generis*." The rule for entering a nonsuit was therefore discharged. So, in *Kitchen v. Shaw* (b), where the cases are collected, it was held that a domestic servant was not amenable to the summary jurisdiction of a justice of the peace, who, by the stat. 6 G. 3. c. 25. s. 4., is autho-

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(a) 7 B. &amp; C. 96.

(b) 6 A. &amp; E. 729.

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rised to commit a party offending to the house of correction, "if any artificer, calico-printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, *or other person*, shall contract with *any person whomsoever* for any time or times whatsoever, and shall absent himself from his service before the term of his contract shall be completed." Lord Denman C. J., in giving judgment said, "We are clearly of opinion that the defendant had no jurisdiction. \* \* \* The statute 6 G. 3. c. 25., entitled 'An Act for better regulating apprentices, and persons working under contract,' is introduced by no general preamble. \* \* \* The preamble of the fourth section is thus worded: 'And whereas it frequently happens that artificers, calico printers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, *and others*, who contract with persons for certain terms, do leave their respective services before the terms of their contracts are fulfilled, to the great disappointment and loss of the persons with whom they so contract: for remedy whereof, be it further enacted,' that, 'if any artificer' (followed by the same list as before), '*or other person*, shall contract with *any person whomsoever* for any time or times whatsoever,' &c. Large as these words undoubtedly are, when we apply to them the ordinary rules for construing acts of parliament laid down by Mr. Dwarrris (part ii. vol. ii.), and acted upon in all times, but nowhere more clearly stated than by Lord Tenterden in *Sandiman v. Breach* (a), we find ourselves compelled to say that the *other persons* are not all persons whatever who enter into engagements to serve for stated periods, but persons of the same description

(a) 7 B. & C. 100.

as those before enumerated; and that the generality of the words must have been so restricted, even though domestic servants had not been excepted from stat. 5 *Eliz. c. 4.*" The general words, therefore, "other building," must be controlled by the particular words which go before. But, secondly, even if the cow-house or stable mentioned in the case could be held to be a building within the act, it would still be a building ancillary to the occupation of the land. [*Maule J.* I do not find it stated in the case that the building was *erected* or *used* for the more convenient occupation of the land. It only says, that the building was conveniently *placed* for the occupation.] If that construction is to be adopted by the Court, the case entirely loses its importance upon this point, as it fails to raise the question whether a building ancillary to the occupation of land is within the twenty-seventh section of the Reform Act.

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TINDAL C. J. It appears to me that the words "other building," in the twenty-seventh section of the stat. 2 *W. 4. c. 45.*, are satisfied by the stable or cow-house in question, described as it is in the case reserved for our opinion by the revising barrister. It is very true, that the statute begins with the enumeration of "house, warehouse, counting-house, shop, or other building:" but when we are told that a building, to confer this franchise, must be *ejusdem generis* with those so enumerated, I am far from saying that this is not a building *ejusdem generis* with those mentioned, because I can conceive so many buildings different to those, to which the language in the act would not apply. Thus, a bridge would not be such a building. A drain to

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lead off water from a man's land might be very valuable to a party, and yet it would not be a building *ejusdem generis* with those that are mentioned; but there are a great many buildings which would not be excluded, although they are not enumerated in the act. Suppose, for instance, the case of a room built up for the purpose of obtaining a prospect; such a building would fall within the terms of the section. From the statement in the case, this building appears to me to be a room in which the trade of a livery-stable keeper, or a dairyman, might be carried on within the borough; and it would, therefore, fall, fairly and naturally, not, indeed, within the enumerated items, but within the general description of a building. It seems to me that the revising barrister was wrong, and that the name of the claimant must be restored to the list.

COLTMAN J. I am of the same opinion.

ERSKINE J. I see nothing in the act of parliament which confines the words "other building" to a building erected or occupied for the purpose of trade. The section itself enumerates a "house," which may be used either for the purpose of trade, or of mere habitation. But, even if it were necessary that the building should be used for trade, there is nothing in the case which excludes such an occupation of this building; because a cow-house or a stable may be so employed. There may be buildings, such as those enumerated by the Lord Chief Justice, which would not fall within the meaning of the section; but then there are many others, which have nothing to do with trade, which would clearly come within it.

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MAULE J. I also think that the word "building" is not to be understood in its largest possible sense, but is to have some restriction from the company in which it is found in the twenty-seventh section of the Reform Act. Some buildings must be taken to be excluded, and, among others, such as my Lord Chief Justice has mentioned. The enumeration would exclude, also, such a case as that of a wall, inclosing a piece of ground, which might well be worth 10% annual value, but that would not be a building within the act of parliament. The act does not require that the building, in order to confer the right of voting, should be used for trade, although it certainly does mention those which are used for that purpose. But, suppose goods were put into this cowhouse or stable, it would then become a warehouse; and if sold there, it would be a shop; and that without any alteration in the construction of the building. I think there is no kind of doubt about this case, and that the revising barrister was quite wrong.

Decision reversed (a).

(a) The following cases were decided on the same day: —

RUSSELL, Appellant, and DOWNES, Respondent.

This was an appeal from the decision of the revising barrister for the borough of Ludlow.

Cockburn appeared for the respondent, and admitted that he could not distinguish the facts from those of the case just decided by the Court.

C. Austin was to have argued on the other side.

Decision reversed.

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BOWES, Appellant, and WILLIAMS, Respondent.

IN this case there was an appeal from the decision of the revising barrister for the borough of *Bridgnorth*. The material facts were the same as in *Whitmore v. The Town Clerk of Wenlock*.

C. Austin for the appellant.

W. H. Cooke for the respondent.

Decision reversed.

November 23.

WEBB, Appellant, and The Overseers of BIRMINGHAM, Respondents.

A lessee of houses, situate within a borough, for the unexpired residue of a term originally created for not less than sixty years, is entitled to claim a vote for the county in respect of such of the houses as are not individually of sufficient value to give a right of voting for the borough, but are collectively of the clear yearly value of not less than 10*l.* over and above all rents and charges payable out of or in respect of the same; although one of the houses comprised in the lease is of sufficient value to confer the borough franchise.

AT a court held before *John Dick Burnaby*, Esq., the revising barrister for the northern division of the county of *Warwick*, *William Hickman*, of *Litchfield Terrace, Aston Road, Birmingham*, was objected to as not being entitled to have his name retained upon the list of voters for the said division, in respect of property situate within the parish of *Aston juxta Birmingham*. The revising barrister retained the name upon the list, subject to the opinion of the Court upon the following case: —

*William Hickman* was the lessee of a term originally created for ninety-nine years, of which three years had expired. The lease comprised several houses, the aggregate annual value of which was 220*l.* All the property was situate within the parish of *Aston juxta Birmingham*, and also within the borough of *Birming-*

Where the Court thought the question raised in the appeal was free in itself from doubt, but doubt was thrown upon it by the form in which the question was stated in the case signed by the revising barrister: *Held, per Tindal C. J., Colman J., and Erskine J., Maule J. dissentiente*, that the appellant ought not to be called upon to pay the costs of the appeal.

*ham.* One house was worth more than 10*l.* a year, and the remainder were respectively worth less than 10*l.* a year. Each house was occupied by a distinct tenant, and in no case was any land occupied jointly with a house. The residue of the houses respectively under 10*l.* were proved to be together of the clear yearly value of not less than 10*l.* over and above all rents and charges payable out of or in respect of the same. The said *William Hickman* had been in receipt of the rents and profits thereof to his own use for twelve calendar months previously to the last day of *July* preceding.

The particulars of his qualification were stated to be, "lease of houses and buildings for years." He was examined, and stated that he relied upon those which individually would be worth less than 10*l.* a year, but collectively were worth more than that amount. It was contended, on the part of the objector, that, under 2 *W. 4. c. 45. s. 25.*, *William Hickman* had no right to a county vote, because one of the houses comprised in the lease was of sufficient annual value to confer upon the occupier a vote for the borough of *Birmingham*; that the county vote was given in respect of the estate and interest which *William Hickman* had as lessee; that he was seized, not properly of the land, but of the term for years, which is the estate and interest that passeth for that time; that the term of years was an entirety, extending over the whole property comprised in the lease, and inasmuch as it comprehended the house of 10*l.* annual value, the same came within sect. 25. of the act. The revising barrister held that, as it is said in sect. 20. of the act, "Every person who shall be entitled as lessee to any lands for the unexpired residue of any term shall be entitled to vote," and not

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“who shall be entitled to the unexpired residue of any *term, &c.*,” the word was used in its popular sense as applicable to “time,” rather than in its legal sense, and the more so, as the word “term” is not used in sect. 25.; and that the claim here was for property to which “he is entitled as lessee for the term (or time),” and which does not confer a vote for the borough, and which, therefore, does not disqualify him from being upon the county register.

The validity of the objections to the names of five other persons being retained upon the list of voters for the northern division of the county of *Warwick* depended upon the same point of law, and the appeals from the decision of the revising barrister in each case were consolidated with the preceding appeal.

*F. Robinson*, for the appellant. The facts of the case as stated disqualify the voter from being placed on the county register. The twenty-fourth section of the Reform Act limits the right of the freeholder to vote in the election of knights of the shire, in respect of any freehold house &c., when *occupied by himself*, which would confer a vote for a borough. Then comes the twenty-fifth section, which enacts “that no person shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament, in respect of his estate or interest as a copyholder or customary tenant, or tenant in ancient demesne, holding by copy of court-roll, *or as such lessee* or assignee, or as such tenant and occupier as aforesaid, in any house, warehouse, counting-house, shop, or other building, or in any land occupied together with a house, warehouse, counting-house, shop, or other building, being, either

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separately, or jointly with the land so occupied therewith, of such value as would, according to the provisions hereinafter contained, confer on *him, or on any other person*, the right of voting for any city or borough, whether he or any other person shall or shall not have actually acquired the right to vote for such city or borough in respect thereof." The question is, whether a person claiming as a leaseholder of houses within a borough, for the unexpired residue of a term originally created for not less than sixty years, is entitled to vote for the county, when one of the houses is of sufficient value to confer a vote for the borough; the others being individually of less value, but collectively of the value of 10*l.* and upwards. It is unfortunate that the legislature has left this point unsettled, because it may be said to be almost historically true, that it was not the intention of the framers of the Reform Act to bestow the county franchise upon persons in this situation. In *Elliott on Registration* (a) this passage occurs: "It has been said, that it was the intention of the framers of the Reform Act to prevent a leaseholder for any term of years of premises situate within a borough from voting in respect of such lease for a county, if any part of the property comprised in the lease would confer the right of voting for the borough; and this probably was so. In the debate on the Reform Bill, (*Mirror of Parliament*, 24th May 1832,) Lord Brougham said, 'The twenty-fifth section deals with the right now conferred for the first time, viz., copyholders who hitherto had no right, and leaseholders who now acquire it for the first time; accordingly they are

(a) 2d ed. p. 135.

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deprived of the right of voting for the county in respect of property in the borough, or rather they have it not: this twenty-fifth clause prevents them from acquiring it.' — See also the debate on an explanatory clause, moved by Sir *James Graham*, on the 22d *June* 1836." The Court will not put this construction upon the clause if the intention entertained by the legislature should seem to them not to have been carried into effect; but it is submitted that such an intention is to be collected from the language which has been used. It is apprehended that the franchise is conferred in respect of the estate or interest which the party has in the *term*, and that the revising barrister is wrong in using the word in its popular sense as applicable to *time*. The difference between term and time in a lease is thus defined by *Blackstone*: "The word *term* does not merely signify the time specified in the lease, but the estate also and interest that passes by that lease; and therefore the *term* may expire during the continuance of the *time*; as by surrender, forfeiture, and the like" (a). The legislature seems to have had that distinction in view in framing the twentieth section of the Reform Act. That section enacts, "That every male person of full age, and not subject to any legal incapacity, who shall be entitled, either as lessee or assignee, to any lands or tenements, whether of freehold or of any other tenure whatever, for the unexpired residue, whatever it may be, of any *term* originally created for a period of not less than sixty years, (whether determinable on a live or lives, or not,) of the clear yearly value of not less than 10*l.* over and above all rents

(a) 2 *Bl. Comm.* 144.

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and charges payable out of or in respect of the same, or for the unexpired residue, whatever it may be, of any *term* originally created for a period of not less than twenty years, (whether determinable on a life or lives, or not,) of the clear yearly value of not less than 50*l*. over and above all rents and charges payable out of or in respect of the same, or who shall occupy as tenant any lands or tenements for which he shall be *bond fide* liable to a yearly rent of not less than 50*l*., shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament for the county &c. in which such lands or tenements shall be respectively situate: Provided always, that no person, being only a sub-lessee, or the assignee of any underlease, shall have a right to vote in such election, in respect of any such *term* of sixty years or twenty years as aforesaid, unless he shall be in the actual occupation of the premises." It is submitted, therefore, that it must have been intended to confer the franchise *propter dignitatem* of the estate, rather than on account of the time for which the lease is granted, or the value of the premises. If it were otherwise, no interest would have been given by a term nearly worn out; and this argument is strengthened by the proviso at the end of the section, which makes actual occupation necessary in the case of a sub-lessee or assignee. It has been generally held by the revising barristers throughout the country that a claimant cannot join two different leases of premises so as to make one term. [*Tindal C. J.* Do you mean to say that he could not join a lease for twenty years of premises in possession with a lease in reversion for forty?] It is apprehended that this would not bring the party within the words of the twentieth

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section of the Reform Act. The stat. 22 & 23 Car. 2. c. 25. s. 3., which prohibits unqualified persons from keeping or using guns, bows, greyhounds, &c., contains an exception in favour of persons having *lease or leases* of ninety-nine years, &c.; but it is submitted that by the twentieth section of the Reform Act the franchise is conferred in respect of one lease only. As the term, therefore, cannot be joined, so it cannot be separated; it must be one entire thing. The franchise is given to the termor in respect of the whole term; and if he assigns over part of the premises, he ceases to have the entire term, and therefore loses his right to vote. The question turns in a great measure on the meaning of the words in the twenty-fifth section, "in respect of his estate or interest as such lessee or assignee." If he has assigned over part of the premises, he would have an estate or interest in the lands remaining, but not "as such lessee or assignee," for that implies that he is lessee of the whole term. [*Maule J.* If a man is tenant in fee of lands, he is tenant in fee of every part; and so it is with a tenant for years. The difficulty is, that if the claimant has a term in 100 houses, he has a term in one house.] The qualification of the tenant is stated to be "lease of *houses*;" and the claim is made in respect of such lease. It was clearly the intention of the legislature to keep the county voters free from any admixture with the borough voters; and the twenty-fourth section of the Reform Act having limited an existing right, that of the freeholder, the twenty-fifth section may well limit the newly-created right of the leaseholder. If the argument on the other side were to prevail, the lessee of the original term might parcel out the premises to a number of other persons, and then

each assignee of part might grant as many under-leases as he liked, so that votes would be indefinitely multiplied. [*Maule J.* There is this restriction, that the premises assigned must be of the clear yearly value of not less than 10*l.* Suppose a man has a term of premises granted for 100 years, and he is evicted from part of the premises by title paramount; according to your argument he would lose his vote, as you say that the term comprehends all that was in the original lease.] Eviction by title paramount from part would not hurt, because the grantee would have all that the grantor had power to grant. It will no doubt be contended on the other side that *Mr. Hickman* does not claim to vote in respect of his estate or interest in the house, which is of sufficient value to give a vote for the borough, but in respect of his estate or interest in the other houses. This, it is submitted, he cannot do, because he could not make out his right to vote in respect of those houses without shewing, at the same time, his right to vote in respect of the house of 10*l.* value, and then he would be excluded, by the terms of the twenty-fifth section of the statute, from the right of voting for the county. He referred also to *Patrick M'Kee's Case (a)*, and to the observations of *Littledale J.* in *R. v. Dicheat. (b)*

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*Mellor*, for the respondents. It is submitted that *Mr. Hickman* is clearly entitled to be retained on the register. The opinions referred to, relative to the intention of the framers of the Reform Act, are, to say the least, extra-judicial. Looking at the language of the

(a) *Alcock's R. C.* 256.; *Elliott on Registration*, 2d ed. 115.

(b) 9 *B. & C.* 183.

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act, there can be no question that the claimant comes within the twentieth section; and there is nothing in the twenty-fifth section which excludes him from voting. But it is said that a term is an entire thing, and that if any one of the houses referred to in the case confers the right of voting for the borough, that destroys the vote for the county in respect of the term. A term, however, is divisible, and a moiety of the lands might be well assigned for the whole term. (a) In pleading, a lessee is not alleged to be possessed *of* the term, but of lands or tenements *for* the term. He referred to the *Scotch Reform Act*, 2 & 3 W. 4. c. 65. s. 11., and to the *Irish Reform Act*, 2 & 3 W. 4. c. 88. s. 7.; and also to *Robert Sweetman's Case*. (b)

*Robinson* was heard in reply.

TINDAL C. J. It appears to me that the revising barrister was right in the construction which he has put upon the statute 2 W. 4. c. 45. It is perfectly clear that, by the twentieth section of the act, the right of voting is given to individuals in the situation of Mr. *Hickman*, as his case falls distinctly within the words of that clause, he being a lessee of lands or tenements for a term originally created for a period of not less than sixty years, and of the clear yearly value of not less than 10*l.* over and above all rents and charges payable out of or in respect of the same. Now, it appears to me, that the word *term* carries with it, what is called the *interesse termini*, that is, an interest in every portion of the premises which are the subject of the term; and it

(a) *Devereux v. Barlow*, 2 *Saund.* 181 (d), note 1.

(b) *Alcock's R. C.* 27.; *Elliott on Registration*, 2d ed. 176.

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can no more be said that he has an interest in one part of the tenements than he has in all the other parts of the premises which originally comprised the subject-matter of the lease. So far, therefore, as the words of the twentieth section go, the claimant has a clear right to vote. Then comes the twenty-fifth section; and the question which arises upon that is, whether an intention is expressed, with equal clearness, of taking away his right; if not, we are bound to say that the right still remains in the party. The twenty-fifth section disqualifies a person from voting for the county in respect of his estate or interest as lessee in any house of such value as would confer on him, or any other person, the right of voting for the borough. Now, all that is stated in the case is, that, with respect to one particular house, it falls within this predicament, and it leaves untouched that which formed his qualification, viz. the remaining houses, in respect of which he is as much in possession of the term as of any other. As *Mr. Hickman* claimed to vote, not in respect of the house which was of the annual value of 10*l.*, but of the other houses, which were individually of a lower yearly value, I think that his right to vote, given to him by the twentieth section of the statute, is not taken away by the terms of the twenty-fifth section.

COLTMAN J. I am of the same opinion. The case has been argued by *Mr. Robinson* with reference to the language of the twentieth section of the act; and he has given a construction to that section which I think there is no warrant in law for saying it bears; because he seems to think that a party who is lessee has an interest in the whole, and not in each part of the



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“who shall be entitled to the unexpired residue of any *term, &c.*,” the word was used in its popular sense as applicable to “time,” rather than in its legal sense, and the more so, as the word “term” is not used in sect. 25.; and that the claim here was for property to which “he is entitled as lessee for the term (or time),” and which does not confer a vote for the borough, and which, therefore, does not disqualify him from being upon the county register.

The validity of the objections to the names of five other persons being retained upon the list of voters for the northern division of the county of *Warwick* depended upon the same point of law, and the appeals from the decision of the revising barrister in each case were consolidated with the preceding appeal.

*F. Robinson*, for the appellant. The facts of the case as stated disqualify the voter from being placed on the county register. The twenty-fourth section of the Reform Act limits the right of the freeholder to vote in the election of knights of the shire, in respect of any freehold house &c., when *occupied by himself*, which would confer a vote for a borough. Then comes the twenty-fifth section, which enacts “that no person shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament, in respect of his estate or interest as a copyholder or customary tenant, or tenant in ancient demesne, holding by copy of court-roll, *or as such lessee* or assignee, or as such tenant and occupier as aforesaid, in any house, warehouse, counting-house, shop, or other building, or in any land occupied together with a house, warehouse, counting-house, shop, or other building, being, either

separately, or jointly with the land so occupied therewith, of such value as would, according to the provisions hereinafter contained, confer on *him, or on any other person*, the right of voting for any city or borough, whether he or any other person shall or shall not have actually acquired the right to vote for such city or borough in respect thereof." The question is, whether a person claiming as a leaseholder of houses within a borough, for the unexpired residue of a term originally created for not less than sixty years, is entitled to vote for the county, when one of the houses is of sufficient value to confer a vote for the borough; the others being individually of less value, but collectively of the value of 10*l.* and upwards. It is unfortunate that the legislature has left this point unsettled, because it may be said to be almost historically true, that it was not the intention of the framers of the Reform Act to bestow the county franchise upon persons in this situation. In *Elliott on Registration* (a) this passage occurs: "It has been said, that it was the intention of the framers of the Reform Act to prevent a leaseholder for any term of years of premises situate within a borough from voting in respect of such lease for a county, if any part of the property comprised in the lease would confer the right of voting for the borough; and this probably was so. In the debate on the Reform Bill, (*Mirror of Parliament*, 24th May 1832,) Lord Brougham said, 'The twenty-fifth section deals with the right now conferred for the first time, viz., copyholders who hitherto had no right, and leaseholders who now acquire it for the first time; accordingly they are

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a term originally created for a period of not less than sixty years, &c., is placed, as it seems to me, by the twentieth section, on the footing of a *quasi* freeholder; whereas, in the original act (*a*), which restricted the right of voting in counties, the right was limited to 40s. freeholders. The franchise, therefore, being conferred by the twentieth section, the question is, whether it is taken away by the twenty-fifth section. I do not quite concur, in the strict sense of the words used by the Lord Chief Justice and my brother *Erskine*, in thinking that it should be *clearly* taken away by the words of the act. If it were taken away, I think it *would* be taken away; and no obscurity would prevent the clause from having that effect, if, after all, the twenty-fifth section deprived the claimant of the right which the twentieth section had conferred upon him. Substantially, however, there is no difference in the result to which we all come on this subject, because the twenty-fifth section not only does not clearly take away his right to vote, but very clearly does not take it away. Does this person claim to vote in respect of his interest as lessee of a house which would give a vote for a borough? He does not; he claims in respect of a number of houses, which are individually of less value than 10*l.* a year. I think that the revising barrister was quite right, and that there was no foundation for the appeal against his decision.

Decision affirmed.

*Mellor* then applied, on behalf of the respondents, for the costs of the appeal, under the seventieth section of

(*a*) 8 *Hen.* 6. c. 7.

the Registration of Voters' Act, 6 *Vict. c. 18*. He submitted that, as the appellant had set the law in motion, and had chosen to take the opinion of the Court, he ought to defray the expenses of the proceedings. Unless the seventieth section of the new act was to be quite inoperative, it was difficult to conceive a case in which the law so clearly applied as the present.

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TINDAL C. J. I do not think that this is a proper case for costs. There is some degree of doubt thrown on the question by the form which was given to it in the case stated by the revising barrister.

MAULE J. It really appears to me that this is, emphatically, a case for costs.

The majority of the Court, however, being of opinion that no costs ought to be given, the application was

Refused.

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## MICHAELMAS VACATION.

December 6. WRIGHT, Appellant, and The Town Clerk of  
STOCKPORT, Respondent.

A room in a factory, being a distinct or separate portion thereof, of which the tenant had the exclusive use, and also the key of the door: *Held* to be a building within 2 W. 4. c. 45. s. 27.

*Held* also, that the fact of the landlord contracting to furnish, and furnishing, power from a steam-engine to work a spinning-machine in such room, in common with machines in other rooms in the factory, did not destroy the exclusive character of such occupation.

Where a rate bears upon its face the name of the occupier, the premises for which he is

rated, the rateable value thereof, and the amount of the rate, such rating is sufficient within the twenty-seventh section of the Reform Act.

Payment of the entire rate by any of the parties jointly rated, is a payment by each of the joint-occupiers of his respective rate, within the meaning of the same section.

UPON an appeal from the decision of the revising barrister for the borough of *Stockport*, the following case was stated for the opinion of the Court:—

Borough of *Stock-* } At the Court held before me,  
*port*, to wit. } *Robert Griffiths Temple*, Barrister-at-Law, duly appointed to revise the lists of voters for the said borough of *Stockport*, for the revision of the list of voters for the said borough within the township of *Stockport*:—

*John Wright* objected to the names hereunder written being retained on the said list, and it appearing to me that the validity of the objections to the several names of voters hereunder written depends and hath been decided by me upon the same state of facts, and upon the same points of law, I did declare that the appeals against such decision in respect of such names being so retained ought to be consolidated, and that the town clerk of the said borough of *Stockport* shall be the respondent in such consolidated appeal.

The facts of the case are as follow:—

There is a factory or building belonging to Mr.

*Elkanah Cheetham* (a) as owner, consisting of four stories or floors in height, which he lets off to a number of different persons for the purpose of cotton spinning. To each of these persons a distinct or separate portion of the building, consisting of one room varying in size, is let at a distinct rent, such rents varying from 10*l.* to 30*l.* per annum for a room, according to its dimensions. In these rooms each tenant has his own machines for spinning; which machines are worked by a power supplied by a steam-engine belonging to, and worked by and at the expense of, the landlord, who also finds the main gearing or shafting, which communicates such power to the machines. It is part of the contract with each tenant that the landlord shall so supply such power.

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Each tenant has the exclusive use of his room, and has the key to the door thereof. The approach to these rooms is, in some instances, a common staircase leading from the entrance to the factory, and upon which staircase the different doors to the rooms open. There is a door to such general entrance, but it is never locked or fastened. In other instances the rooms are approached by separate staircases from the ground outside the building, and in others by doors on the ground, opening into the factory yard.

It is part of the agreement with each tenant that the landlord is to pay the rates, and the rent is higher in consideration of such payment.

Upon the rate books the landlord and all the tenants appear to be rated jointly in the form following:—

(a) In the rate-books, as appeared by the case, *Elkanah Cheetham* and *Samuel Howard Cheetham* were described as owners.

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No.	Name of Occupier.	No. of Votes.	Name of Owner.	No. of Votes.	Description of Property rated, viz. whether Lands, Houses, Tithes, Impro- priation or Ap- propriation of Tithes, Coal Mines, Saleable Underwood.	Name or Situa- tion of Pro- perty.	Esti- mated Extent.	Gross estimated Rental.	Rateable Value.	Rate at 5s. in the Pound.	Arrears Duc.	Total Amount to be col- lected.	Amount actually col- lected.	Present Arrears.	Amount not recover- able, or legally excused.	Empty.
4588	Orchard Street. Elkanah Cheetham Samuel Howard Cheetham William Clayton Aquila Taylor Thomas Higham George Hankinson Abel Hyde William Plant Samuel Berch James Fisher Peter Bailey William Bunting James Hulme James Hambleton James Clarke Thomas Bamber John Deaville Thomas Anson	-	Elkanah Cheetham and Samuel Howard Cheetham	-	Factory, Warehouse, Steam- Engines, Steam-Pipes, Gearing and Shafting, and Gas-Pipes.	-	-	£ 129 0 0	£ 100 0 0	£ 25 0 0	-	£ 25 0 0	£ 23 2 6	-	-	£ 1 17 6

The whole of the rate, with the exception of what was allowed for the portions which were empty, was paid up, and had been paid by the landlord in due time.

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The points raised for my decision were: —

1st. Whether each of these rooms or floors so held was such a building as, under 2 *W. 4. c. 45. s. 27.*, would confer the right of voting upon its occupier.

2d. Whether there was an exclusive occupation in each such tenant as required by the same clause.

3d. Whether each of such occupiers was duly rated in respect of such premises occupied by him.

4th. Whether each of such occupiers could be held to have duly paid the rate in respect of such his occupation, part of the rate having been foregone in respect of what was empty, and the whole of what was paid having been in fact paid by the landlord.

Upon each of the said points I decide in the affirmative, and retain the names hereunder written upon the said list of voters.

(Here followed the names of the twenty-three persons objected to.)

The case was argued by

*Townsend* for the appellant, in *Michaelmas* term, *November* 13th. First, this is not a building within the meaning of the twenty-seventh section of the stat. 2 *W. 4. c. 45.* It is not a building *ejusdem generis* with those enumerated in that section, viz. "house, warehouse, counting-house, or shop." *Brown v. Lord Granville* (a) is an authority to shew that the words "other build-

(a) 10 *Bing.* 69.



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ing" are to be construed as including buildings only *ejusdem generis* with those before specified. Those words would apply to the mill or factory described in the case, and to any distinct or separate erection. But here the qualification of each claimant is only part of one floor of a building. It is true that a "shop" or "counting-house" may only be a portion of another building; but it is a portion complete in itself, and is a known and recognised qualification. If a part of a building like that described in the case should be held to be within the twenty-seventh section, there is no reason why a cellar or a vault should not also be included. It is submitted, however, that such a construction would carry the words of the section much farther than was contemplated by the legislature. In a valuable work by Mr. Cockburn (a), it is said, "A question of still greater difficulty arises as to the meaning of another of the descriptions of property enumerated in this section, namely, the word 'building.' Indeed, it could scarcely have been possible for the legislature to have made use of a term more ambiguous, or more likely to lead to varieties of construction. In the strict sense of the word almost every erection, however rude and unfashioned, is a building; but it is quite obvious that a limit must be placed somewhere. Not every stone placed upon another can be considered as sufficient to confer the elective franchise. The difficulty, however, is where to draw the line; and it certainly is not easy to adopt any criterion which will not be liable to objection. The decisions, as might naturally be expected, have been conflicting in the extreme. Some barristers have

(a) *Questions on Election Law*, p. 37.

thought that, as the words 'other building' in the statute immediately followed the more particular specification of several species of buildings there mentioned, the meaning of the word must be restricted to such buildings as were *ejusdem generis* with those previously enumerated. Others, on the other hand, have been of opinion that, the words of the act being general, and coupled with no qualification, whatever could fairly come under the ordinary appellation of a building must be considered as within the meaning of the statute. Therefore, in the case of cattle-sheds and similar erections, upon evidence being given by land-surveyors, or other competent persons, that such buildings came within the denomination of 'farm{buildings,' they held them to be within the meaning of the act." If it had been intended that a portion of a building should confer the franchise, the act would have contained the words "or other parts of a building." It may readily be conceded that if each claimant had slept in his room, then, as the case discloses that each of the parties has a separate key, and the doors open upon a common staircase, the case would fall within the principle upon which it has been decided that chambers in the inns of court constitute a good qualification. The room might then be considered as the tenant's dwelling-house. The Courts have always attached an artificial meaning to the word "house," in indictments for burglary, if the occupier has another residence. Thus, in *Rex v. Smith (a)*, a building of mud and brick, used only as a booth for the purposes of a country fair, for a few days in the year, and in which the prosecutor and his wife slept

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(a) 1 Moo. & Rob. 256.

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every night of the fair, during one night of which the offence was committed, was held to be a sufficient dwelling-house for the purpose of burglary. But a booth would hardly come within the meaning of the words "other building." It is laid down also by Lord Coke (*a*), in treating of burglary, that "burglary may be committed as well in the outset buildings, as in the inset, for all are parts of the mansion-house;" having previously (*b*) divided the *domus mansionalis* "into two branches, viz. to inset edifices, as hall, parler, buttry, kitchen, and lodging chambers, &c., and the outset buildings, as barnes, stables, cowhouses, dairies," &c. In cases of burglary, an artificial meaning is, therefore, given to the word "house," for the purposes of personal security; but it does not follow that such an artificial construction should be extended to cases where the same reason does not apply.

Even, however, if the Court should be of opinion that each room is a building, it is submitted, secondly, that there is no exclusive occupation by each tenant. There is no exclusive use, by any one of the tenants of these rooms, of the steam-engine, which must be included to make up the clear yearly value of 10*l*. It is the liberty of using the steam-engine which constitutes the chief value of the occupation. The case falls, therefore, within the principle of those decisions upon settlement law, which have established that a licence to use machinery does not amount to the taking of the tenement; *Rex v. Mellor*. (*c*) [*Tindal* C.J. In that case, the contract with the landlord was for a mere standing-place in the mill for the pauper's carding-machine, in

(*a*) 3 *Inst.* 65.

(*b*) 3 *Inst.* 64.

(*c*) 2 *East*, 189. See also *Rex v. Tardebigg*, 1 *East*, 528.

order that it might be worked by the steam-engine ; here, each tenant has the exclusive use of the room in which his spinning-machine is placed.] Still, although the tenant has the exclusive use of his own room, he has not of the engine, the occupation of which is joint.

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Thirdly, the occupiers were not duly rated in respect of the premises occupied. The rate is made under the provisions of the Parochial Assessments Act, 6 & 7 W. 4. c. 96. s. 2., and is deficient in some particulars which are required by the statute to be inserted. There is no sum charged as the gross estimated rental opposite the name of each individual occupier ; but there is only a gross estimated rental, which is put down at 129*l.*, upon the whole factory. Neither does it appear, from the rate, what each tenant is to pay. The rate, therefore, is bad. It is found in the case that the rents of the rooms vary from 10*l.* to 30*l.* per annum, and it is important that the gross value of the tenement should be put against each person's name, to enable him, if assessed unfairly, to appeal against the rate. It has been held that, in order to gain a settlement, a tenant must be rated, as well as pay ; *Rex v. Warblington (a)* ; *Rex v. Corhampton. (b)* Under the fifty-first section of the Reform Act, the revising barrister has a right to call for the production of this assessment, in order to satisfy himself whether or not the tenement is of the yearly value of 10*l.* If he should do so, it would not furnish him with any information. A printed form of rate is given in the schedule to the Parochial Assessments Act, in which nothing is left blank ; and it is an authority, therefore, in favour of the present objection. An additional reason for requiring that the form should be

(a) *Burr. S. C.* 787.(b) 2 *Doug.* 621.

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completely filled up is, that the rest of the parishioners are entitled to know at what sum each of the claimants was assessed, in order that, if necessary, they may appeal to the Quarter Sessions against the rate as being unequal. The overseers, also, of the following year would have a right to the information which would be thus obtained, in order that they might determine whether their predecessors had acted rightly in putting the names of the parties on the rate. Assuming, upon this part of the case, that each room in the factory is a distinct building, each occupier ought to be separately rated; whereas, if rated at all, he is rated in respect of a joint occupation. It is submitted, also, that each occupier has not been duly rated, because there is not on the rate any such description of the premises occupied as would inform a party whether a voter had left one building and gone to another, or not; *Regina v. Dodworth.* (a) There is a general description given of the whole mill, but not of any one of these separate buildings occupied by the eighteen tenants.

Then, as to the fourth point. The rate has not been duly paid by each occupier. The words of the proviso in the twenty-seventh section of the Reform Act are express, that no person shall be registered, “unless such person, where such premises are situate in any parish or township in which there shall be a rate for the relief of the poor, shall have been rated in respect of such premises, &c.; or unless such person shall have paid, on or before the 20th day of *July* in such year, all the poor’s rates and assessed taxes which shall have become payable from him in respect of such premises pre-

(a) *Falc. & Fitz. Elec. Ca.* 276. note.

viously to the 6th day of *April* then next preceding."

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Payment of rates, therefore, by the person rated, is made a condition precedent to the right of the claimant to have his name inserted in the register. A question has been raised, whether a payment by the landlord of rates, pursuant to an agreement between them, is a sufficient payment by the tenant to entitle him to a settlement. That question was argued a day or two ago before the Court of Queen's Bench in the case of *The Queen v. South Kilvington*. (a) The facts of the case were, that the pauper was let into occupation of three acres and three roods of land, the landlord agreeing to pay "all that came against it." By reason of this agreement of the landlord, the rent was higher than it otherwise would have been. The pauper's name was in the rate-book as occupier, but when the rate was demanded, he referred the overseer to the landlord, who paid. The Court held, that this was not such a payment of rates as to satisfy the stat. 3 *W. & M. c. 11. s. 6.*, or the stat. 4 & 5 *W. 4. c. 76. s. 66.*, and that no settlement was gained thereby. The principle of that decision applies to the present case. Even, however, if it could be considered that such a payment by the landlord was a good payment of rates by the tenant, the whole of the rate ought to have been paid, whereas it is found in the case that part was foregone in respect of what was empty. Mr. *Elliott*, in his treatise on *Registration* (b), says, "It has generally been considered that the whole of the sum at which a party has been assessed in any rate must be paid. If, therefore, there has been a remission of the whole or any part of the rate, either

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STOCKPORT.(a) 13 *Law Journal, N. S. M. C. 3.*

(b) 2d ed. 194.

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by the overseers or by the magistrates, under the provisions of the stat. 54 G. 3. c. 170. s. 11., the party so excused would not be entitled to be registered, assessment and *payment* being conditions imposed by the statute, in compliance with which alone a person is entitled to the franchise." The whole mill being rated, it is submitted that as long as any part of it is occupied the whole rate is to be collected; and, consequently, there has not been such a payment of rates as the statute requires.

*Welsby*, for the respondent. None of the objections which have been urged are tenable. In the first place, each room is a building within the twenty-seventh section of the Reform Act. It is quite clear that it was the intention of the legislature to confer a vote in respect of portions of a house; for a "warehouse, counting-house, and shop," which are parts only of a building, are expressly specified. A building *ejusdem generis* with some of them would mean some building in which the party carries on a visible trade, and the occupation of which gives him an interest in the concerns of the borough. Cattle-sheds would not, it may be admitted, confer a vote; but a room in a mill, or any other portion of such a building, does satisfy the words of the clause. The case of *Brown v. Lord Granville* (a), which has been cited on the other side, is a strong authority in favour of the respondent. There the question was, whether sheds which protected engines for the convenient working of a mine were within the provisions of a watching and lighting act, which authorised the commissioners to make a rate upon all persons inhabiting, using, or oc-

(a) 10 Bing. 69.

cupying any houses, shops, mills, sheds, or other buildings or tenements within the township. It was contended that they were exempt as being merely accessorial to the engines: but, in giving judgment, *Tindal* C. J. said (a), "The word 'shed,' perhaps, might be sufficient to authorise the rate, as constituting a covering to something within the township; but if not, the words 'other buildings' constitute *nomen generalissimum*, which will include the structure in question." If, where a tax is to be imposed, an act of parliament receives so extensive a construction, the construction ought not to be narrowed where a franchise is conferred.

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The second point is, whether each party has the exclusive occupation of his room. It is found in the case that he has such an exclusive occupation. It has been said that it does not appear that any one of the occupiers has the exclusive use of the steam-engine; but there is nothing in the case to shew that the engine is in the mill at all. Every one of the parties who have the exclusive use and occupation of these rooms has a *power* supplied to him; but that is all. The question respecting the steam-engine can only affect the value of the premises, which is not in issue.

Thirdly, has there been a sufficient rating of the occupiers for the purposes of registration? The question submitted to the Court in the case is, whether the occupiers were "duly rated;" but the real point is, whether they are sufficiently rated for the purposes of the Reform Act. It is conceded that the rate is not quite formal, and that it could not be sustained upon an appeal to the quarter sessions. It is apprehended, however, that the

(a) 10 Bing. 73.



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(a) 2 *Doug.* 621.

(b) *Burr. Sett. Ca.* 787.

(c) 11 *Ad. & Ell.* 73.

registered elector or claimant may inspect them. By the eighty-first section of the stat. 6 *Vict.* c. 18. the questions which may be put to the voter at the poll are now reduced to two, viz. whether the voter is the same person whose name appears on the register, and whether he has already voted. Upon the whole, therefore, it is submitted, that the question is not whether the parties were "duly" rated, but whether they are sufficiently rated for the purpose of identification, just as in the case of an assessment to the land-tax before the Reform Act passed.

Lastly, it is apprehended that there has been a sufficient payment of rates by each of the occupiers. Undoubtedly, in *The Queen v. South Kilvington* (a), it was held that a payment of the tenant's rates through the medium of the landlord was not sufficient to enable the pauper thereby to gain a settlement; but that case was decided on the authority of *Rex v. Weobley* (b), which is distinguishable from the present, because here the payment was made by the hands of the landlord as the agent of the tenant. *Rex v. Armouth* (c) comes nearer to the present case. Lord *Ellenborough* there said, "The case of *The King v. Weobley* was distinguished from the other cases by Lord *Kenyon*, because there the officer did not pay the tax mediately or immediately; and, as he says afterwards, because the pauper neither *in fact paid* the rate himself, nor constructively by the hands of his agent." (d) In *Rogers on Elections* (e) it is said, "A question has often arisen, whether the payment of rates by the landlord, by an arrangement be-

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(a) 13 *Law Journal*, N. S. M. C. S.(b) 2 *East*, 68.(c) 8 *East*, 383.(d) 8 *East*, 386.

(e) 3d ed. 153. 6th ed. 191.

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tween him and his tenant, the latter being the party rated, that he should pay an additional rent in respect of the landlord paying the rates, or adding the amount of the rates to the rent in order to reimburse the landlord, is a sufficient payment by the tenant under sect. 27. It would certainly seem to be so: in such a case the debt is the debt of the tenant, and the parish has no remedy against any but him: whoever, therefore, pays the rate, by so doing discharges the debt due from the tenant; it is therefore a payment for the benefit of the tenant." *Rex v. Bridgewater (a)*, *Rex v. Lower Heyford (b)*, and *Rex v. Cozens (c)* referred to in *Elliott on Registration (d)*, are all authorities to shew that the rate need not be paid by the hand of the tenant. The fact of part of the rate being forborne, in respect of what was empty, shews that in fact, although not in form, each of the tenants was rated in respect of his separate occupation, and that the whole, therefore, has been paid by each occupier.

*Townsend* replied.

*Halcombe* Serjt., *amicus curiæ*, referred to 6 *Vict. c. 18. s. 75.*

*Cur. adv. vult.*

The judgment of the Court was now delivered by

TINDAL C. J. The first question submitted for our decision by the revising barrister is, whether each of the rooms or floors described in the case was such a *build-*

(a) 3 *T. R.* 550.

(c) *Doug.* 426.

(b) 1 *B. & Adol.* 75.

(d) 2d ed. 193.

ing as, under the twenty-seventh section of the "Act to amend the representation of the people in *England and Wales*," would confer the right of voting upon its occupier? And we are of opinion that each of the rooms held in the manner described in the case was such a building as to confer the right of voting upon its occupier. It is called in the case "a room;" it is described as a distinct or separate portion of the factory; each tenant is stated to have the exclusive use of his own room, and the key to the door thereof. And we think such a description, and such a mode of occupation, brings it as much within the meaning of the word "building" as is a shop or counting-house, which are expressly specified in the act.

The second question is, whether there was an exclusive occupation in each such tenant, as required by the same clause? And to this question we answer, that the finding of the revising barrister in the case to which we before adverted appears to us to put an end to any doubt on the point; for the case finds that "each tenant has the exclusive use of his room, and the key of the door thereof." And it does not appear to us that the landlord's engagement to supply a steam-power communicating with each room, in order that the tenant may work his own machine therewith, makes the occupation of the room itself by the tenant less exclusive than if there had been no such engagement. It seems to have no further bearing on the question of exclusive occupation than if the landlord had, by the agreement for the taking, contracted to furnish manual labour for the service of the occupiers in their trade or business carried on in each separate room, or had contracted to provide a light in such a situation that it would illumi-

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nate equally all the rooms ; observing that, in the statement before us, no question is raised as to the sufficiency of the annual value of the room itself, without the steam-power, for the purpose of conferring a vote, whatever bearing it might have upon the case.

The third question submitted to us is, whether each of such occupiers was duly rated in respect of such premises occupied by him ? In answer to which question, it is in the first place to be observed that all that the act requires is, that the person claiming the right to vote “ shall have been rated in respect of such premises to all rates for the relief of the poor ;” the object of this provision in the act appearing to be, that additional evidence should be thereby furnished of the actual occupation by the claimant during the twelve months made necessary by the act. And, with this object in view, we think it never could have been intended by the legislature that the rate, in order to be sufficient for the purposes of the act, must be so perfect in point of form that it must be free from every objection which might be allowed to prevail against it in an appeal at the quarter sessions. Such a construction of the statute would place the vote of the claimant in extreme hazard from the ignorance or carelessness of the overseer ; for the statute has given the claimant himself no power to correct or control any error in the rate, but has limited his application to the overseer, by sect. 30., to “ a claim to be rated to the relief of the poor ;” and in the same section has required no more from the overseer than to “ put the name of the occupier on the rate for the time being.” The claimant, therefore, has no opportunity of rectifying any error as to the particulars of the rate, except by an appeal to the quarter sessions,

for which the time might not be sufficient ; and the expense would be great. We think, therefore, if the rate is in such form that the name of the occupier appears, the premises for which he is rated, the rateable value thereof, and the amount of the rate, it is a sufficient rate within the intention of the act. And, looking at the rate now in question, it appears that all the persons who are claimants are jointly rated by their respective names. And as they are rated for premises which are therein described as “ factory, warehouse, steam-engine, steam-pipes, gearing and shafting, and gas-pipes,” and it appears by the case that the factory comprehends all the rooms which are occupied by each of the claimants respectively, each claimant, being rated for the whole factory, is rated for that part of it which he occupies himself. And as to the annual value of the property, it is stated expressly in the rate, as is also the amount of the rate itself. We think, therefore, that each occupier is rated in respect of the premises occupied by him, within the meaning of the act.

The fourth question submitted by the revising barrister is, whether each such occupier can be held to have duly paid the said rate in respect of such his occupation, part of the rate having been foregone in respect of what was empty, and the whole of what was paid having been in fact paid by the landlord? From the statement in the case, it appears that the whole of the rate, with the exception of what was allowed for the portions which were empty, was actually paid by the landlord ; so that the rate must have been paid for every part of the premises that was in the actual occupation of any *one* ; and the real question does not arise upon the non-payment of the rate, but upon the pay-

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ment thereof by the landlord under an agreement with the tenant. This latter question has accordingly been argued before us, and many decisions of the Court of Queen's Bench have been brought in review, in which the question has been, whether a settlement has been gained by paying the public taxes or levies of the parish, in cases where the tenant has been rated, but the rate has been paid by the landlord. It appears, however, to us, to be unnecessary to consider the analogy which those cases may bear to that which is now under consideration, inasmuch as there is one circumstance in the present case which essentially distinguishes it from those cited. For, in the case now under consideration, all the claimants are rated as joint occupiers, and the rate is paid by *two* of them: not by one who is a stranger to the rate, as the landlord in the cases referred to always was; and we think it impossible to contend that, after a payment of the whole rate by any of the parties so jointly rated, the fact of payment by each and every of them can be brought in question; but that such payment by any of the parties so jointly rated, must enure to the benefit of all, and is virtually a payment by each. We therefore think the persons rated have paid the poor-rate within the meaning of the statute; and determine that the decision of the revising barrister was right.

Decision affirmed.

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HUGHES, Appellant, and The Overseers of CHATHAM, Respondents. *December 6.*

(In the Matter of the Votes of JAMES BURTON and Seven Others.)

SAME *v.* SAME.

(In the Matter of the Votes of CHARLES ALEXANDER PARKER, and Six Others.)

SAME *v.* SAME.

(In the Matter of the Votes of WILLIAM BROCK and Two Others.)

SAME *v.* SAME.

(In the Matter of the Votes of THOMAS SMITH and Two Others.)

THESE were consolidated appeals from the decisions of *John David Chambers, Esq.*, the revising barrister for the borough of *Chatham*, who stated the facts of each case as follows :—

*James Burton's case.*—The party objected to occupied a house in the dockyard of *Chatham*, of the value of 40*l.* per annum, from *July 1835* to *September 1842*, when he removed to a house in *Milton's Terrace*,

An officer in the service of government, occupying, as such, rent free, a house (no part of which is used for public purposes) belonging to government, in part remuneration for his services, is a "tenant" of such house, within the twenty-seventh

section of the Reform Act.

Such a tenant being rated for the above premises, the rates being paid by government, in part remuneration for the tenant's services : *Held*, that as he was liable, and the payment was made on his account, by those whom he procured to make such payment by giving value for it, the payment was made by him, within the meaning of 2 *W. 4. c. 45. s. 27.* and 6 *Vict. c. 18. s. 75.*



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*Chatham*, about a mile from the dockyard, where he now resides. The house in *Milton's Terrace* he hires of the landlord in the usual manner, and pays a rent of 50*l.* per annum, and is rated for it; and pays such rates in the ordinary way, and no question arises in respect of such house. With regard to the house in the dockyard, it belongs to the Lords Commissioners of the Admiralty. The person objected to is master rope-maker in the dockyard, and, as such, he had the house as his residence. He paid no rent in money for it, but had it as part remuneration for his services. He had the exclusive use and occupation of the house for himself and family, and no part of it was used for public purposes: the office in which he performs his public services being away from it. He had the keys of all the doors, and no person but himself had any control over the house. He was rated to all the poor-rates and assessed taxes in respect of the house in his own name as the occupier. Such rates and taxes were paid by the paymaster general's clerk, at the pay office at *Chatham*. They were so paid as part remuneration for his services. If he had not been allowed the house, he would have had an allowance for a house in addition to his salary; and now that he has not a house in the dockyard, he is allowed one guinea per week by the Admiralty in lieu of rent and rates, under the name of "lodging money." If he had paid the poor rates himself, in respect of the house in the dockyard, instead of having them paid for him, as above, the Admiralty would have repaid him.

*Charles Alexander Parker's case.*—The party objected to occupied the house during the qualifying period.

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The annual value of the house is much more than 10/. He is Lieutenant and Quartermaster of Marines at *Chatham*. The house belongs to the Lords Commissioners of the Admiralty, who give it him for a residence. He pays no rent in money for the house; but has it in part remuneration for his services as Quartermaster. He has the exclusive use and occupation of the house for himself and his family; and no part of it is used for public purposes, the office in which he performs his public services being away from it. He has the keys of all the doors, and no person but himself has any control over the house. The house is within the walls of the barracks, and he has one way into the barracks, and another into the street, without going into the barracks. He is rated to all the poor-rates and assessed taxes for the qualifying period in his own name, as the occupier of the house. The poor-rates and taxes in respect of the house are paid by the barrack master of the marine barracks at the pay office at *Chatham*. Such rates are so paid as part remuneration for his services; and if he were not allowed the house, he would have an allowance for a house in addition to his present remuneration; and if he paid the rates himself he would have a proportionate increase of pay. Officers are frequently obliged to reside out of government houses, from the want of a sufficient number of such houses at *Chatham*, and in all such cases an allowance is made to them by the Admiralty for rent and rates, under the name of "lodging money." He is not compelled to live in the house, but is at full liberty to reside elsewhere if he chooses; but in such case, unless he did so at the request of the Admiralty, he would have no allowance made to him for lodging money.

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*William Brock's case.* — The party objected to occupied a house on *Chatham Lines*, of the value of 20*l.* per annum, thirty-nine years to the present time. It belongs to the Board of Ordnance. He is clerk of the works in the engineer department, and has the house as his residence. He pays no rent in money for it, but has it as part remuneration for his services, by an agreement when he entered the service. He has the exclusive use and occupation of the house for himself and family, and no part of it is used for public purposes; the office in which he performs his public service being away from it. He has the keys of all the doors, and no person but himself has any control over the house. He is rated to all the poor-rates and assessed taxes in respect of the house, in his name, as the occupier. Such rates and taxes are paid by the storekeeper at the Ordnance pay office at *Chatham*. They were so paid as part remuneration for his services, in the same way as he has the occupation of his house. If he had not been allowed a house, he would have received a larger remuneration in money for his services; and if he paid his rates himself, instead of their being paid for him, as above, he would be repaid them by the Board of Ordnance. The house stands by itself, and is not within the walls of any public establishment.

*Thomas Smith's case.* — The party objected to occupied a house in *Chatham* barracks, of more than the value of 20*l.* per annum, during the qualifying period. It belongs to the Board of Ordnance. He is Barrack Master to *Chatham* barracks, and, as such, has the house as his residence. He pays no rent in money for it; but has it as part remuneration for his services. He

has the exclusive use and occupation of the house for himself and family; and no part of it is used for public purposes; the office in which he performs his public services being away from it. He has the keys of all the doors, and no person but himself has any control over the house. The house is within the barracks; but he has an entrance to it from the street, without going into the barracks. The office used for public purposes is not rated to the poor. He is rated to all the poor-rates and assessed taxes in respect to the house, in his own name, as the occupier; and pays such rates and taxes himself, and charges them in his account with the Board of Ordnance, who allow them to him in such account. If he had not been allowed the house, he would have received a larger remuneration in money for his services.

Upon these facts, the revising barrister disallowed the objections in each case, and retained the names of the parties objected to upon the list of voters for the parish of *Chatham*; deciding that each of the said parties occupied, within the borough of *Chatham*, as tenant, a house of the clear yearly value of not less than 10*l.*; and had duly paid all the poor-rates and assessed taxes which had become payable from him in respect of such premises previously to the 6th day of *April* then next preceding.

*Burton's* case was argued by

*Kinglake*, for the appellant, in *Michaelmas* term, *November* 13th and 16th. — The first question is, whether the voter occupied the house in the dockyard at *Chatham* as tenant, within the meaning of the twenty-seventh section of the Reform Act; or, in other words, whether it appears from the facts stated in the case, that

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the relation of landlord and tenant subsisted between the Lords Commissioners of the Admiralty and the voter. It is submitted that there are no premises from which the conclusion can be drawn that the relation of landlord and tenant did exist. The appellant contends that the house was occupied by *Burton* as the servant of the Crown, and that he lived in the house for the better performance of his service as an officer of the government. He cannot, therefore, be said to occupy as tenant. The revising barrister is mistaken in supposing that, inasmuch as no part of the public business was transacted in that house, the voter did not occupy it in his character of a public servant. In cases of settlement law, arising under the statute of 13 & 14 Car. 2. c. 12., it has been held that persons occupying houses provided by their masters for the better performance of their service in another place, do not occupy as tenants, and therefore do not gain a settlement by such an occupation. In *Rex v. Minster* (a) the pauper was hired as a bailiff by one *Parker*, and part of the agreement between them was, that his master was to find him a house, and was either to furnish him with two cows, or the pauper was to be at liberty to hire two, and feed them on his master's farm. The pauper served three years under the agreement, and lived with his family in his master's house, and hired two cows, which fed during the summer in the pastures of his master. It was held that by the feeding of the cows, which was above the yearly value of 10*l.*, the pauper acquired a settlement; but *Le Blanc* C. J. said (b), "In this case, if the pauper's occupation of the tenement was neces-

(a) 3 M. &amp; S. 276.

(b) *Ib.* 280.

sarily connected with the service of the master, as in the case of occupying apartments in the house of the master, I should have no hesitation in saying that that would not have conferred a settlement, although of a greater yearly value than 10*l.*, because the occupation would have been necessary for the performance of the service, for which the master might allot what apartments he pleased." So, in *Rex v. Bardwell* (a), where the pauper was hired for a year as shepherd, and was to have a house and garden rent free, *Bayley J.*, after remarking that the case of *Rex v. Minster* was open to much observation, said (b), "The house and garden being merely for the more convenient performance of the pauper's service as shepherd, must be laid out of consideration; he did not occupy them as a tenant, but as a servant. The statute 13 & 14 *Car. 2. c. 12.* requires that the party should come to *settle* in the tenement: now that means to reside. Here the pauper had no residence but in the character of a servant; the house continued the master's, and the pauper was, with respect to this point, in the same situation as if he had lived in a room in his master's house." And, in *Rex v. Kelstern* (c), the same learned Judge observed (d), "I take the distinction as laid down in *Rex v. Minster* to be this, that if the occupation be unconnected with the service, it will confer a settlement; but if it be necessarily connected with the service, as if it be necessary for the due performance of the service, it shall not confer a settlement." *Rex v. Cheshunt* (e) is also a strong authority in favour of the appellant. There, a pauper employed

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(a) 2 *B. & C.* 161.(b) 2 *B. & C.* 163.(c) 5 *M. & S.* 136.(d) 5 *M. & S.* 138.(e) 1 *B. & Ald.* 473.

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as a labourer by the Board of Ordnance, having previously occupied a house at an annual rent of 7*l.*, which was then purchased by the Board, still continued to reside in part of the premises, at a weekly rent of 2*s.*, which was deducted out of his wages. During such last occupation he also occupied a shop (the shop and house together being of the annual value of 10*l.*), and upon his dismissal from his employment he gave up possession of the house, being required to do so. The Court held, that his last occupation of the house was not as tenant, but as servant, and that no settlement was thereby gained. That case cannot be distinguished from the present. It is found by the revising barrister that "the person objected to is master ropemaker in the dockyard, and, *as such*, he had the house as his residence." The occupation of *Burton*, therefore, is as servant, not as tenant. Upon these cases alone, it is submitted the appellant would be entitled to the judgment of the Court; but there are other authorities still more in point. In *Ferrar's Case* (a) the claimant was a book-keeper to a distillery, and exclusively occupied an entire house, the property of his employers, which communicated through a door by a private passage outside, but not in front, into the distillery yard; besides having a hall-door to the street. The claimant exclusively kept the keys of both these doors; his employers kept the house in repair and paid the taxes, and it appeared that if the claimant ceased to be book-keeper he would have to give up the possession at once. Eleven Judges held unanimously that the claimant was not entitled to be registered as a householder. Here,

(a) *Alc. R. C. 248.*, *Elliott on Registration*, 2d ed. 169.

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the case expressly finds that *Burton* occupied as master ropemaker; he had the residence, therefore, only in respect of his particular employment; and his occupation would have determined the moment he ceased to be so employed. Again, in *Rex v. Snape* (a), the pauper was hired by one *Dawson* to take care of his stock on certain marshes, and he was to occupy a house on the marshes rent free. He was to go into the house at *Michaelmas*, and it was agreed, "that he should not be obliged to leave the house *unless he had notice to quit at Michaelmas*." The sessions found that the pauper had occupied the cottage as servant, not as tenant, and had gained no settlement by such occupation; and the Court of King's Bench held, that the finding of the sessions was not necessarily wrong, and therefore, that it ought not to be disturbed. In giving judgment, *Coleridge J.* said (b), "I think the sessions have drawn the right conclusion. The pauper, looking to the occupation of the house as part of the remuneration for his service, may very properly have stipulated that he should not be obliged to leave the house by being turned out of the service without a six month's notice ending at *Michaelmas*." That is as strong a decision as can be found upon the point. In *Bertie v. Beaumont* (c) it was held that *Howell*, a servant of the plaintiff, who was put into the occupation of a cottage, *with less wages on that account*, did not occupy it as a tenant; but that his master might properly declare on it as his own occupation in an action on the case for a disturbance of a right of way over the defendant's close to such cottage. Lord *Ellenborough* said, in that case (d), "I cannot consider

(a) 6 A. &amp; E. 278.

(b) 6 A. &amp; E. 281.

(c) 16 East, 33.

(d) 16 East, 35.



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that *Howell* stood in the relation of a tenant to the premises. The plaintiff put him in possession of them as his hired servant, and, as any person so circumstanced might be expected to do, he allowed the man less wages on account of the convenience to him of the occupation." In several cases, an indictment for burglary has been held to be good, where the occupation of the house has been laid in the owner, the actual occupier being a servant; that could only be on the ground that the legal occupation was in the master. The cases are collected in *Roscoe's Criminal Evidence* (a). Mr. *Roscoe* says (b), "An agent or clerk employed in a public office, or by persons in trade, is in law the servant of those parties; and if he be suffered to reside on the premises, which belong to the government, or to the individuals employing him, the premises cannot be described as his dwelling-house." Thus, in *Williams's Case* (c), three persons were indicted for breaking the lodgings of Sir *Henry Hungate* at *Whitehall*; and the Judges were of opinion that it should have been laid to be the king's mansion-house at *Whitehall*. So, in *Burgess's Case* (d), the prisoner was indicted for breaking into a chamber in *Somerset House*, and the apartment was laid to be the mansion-house of the person who lodged there; but it was held bad, because the whole house belonged to the queen-mother. In *Peyton's Case* (e), the prisoner was indicted under the 12 *Anne*, c. 7., for stealing a gold watch in the dwelling-house of *W. H. Bunbury*, Esquire. The house was the Invalid Office, at *Chelsea*; an office under government. The ground-floor was used by the

(a) 2d ed. 319. *et seq.*

(b) P. 319.

(c) 1 *Hale* P. C. 522. 527.(d) *Kel.* 27.(e) 1 *Leach*, 324., 2 *East*, P. C. 501.

paymaster-general, for the purpose of conducting the business relating to the office. Mr. *Bunbury* occupied the whole of the upper part of it; but the rent and taxes of the whole were paid by government. The Court held that it was not the dwelling-house of Mr. *Bunbury*. *Hawkin's Case* (a) is an authority to the same effect. *Margett's Case* (b) appears to be in some degree at variance with these authorities; but Mr. *Roscoe* remarks (c), "it may be doubted whether it is to be considered as law." *Witt's Case* (d) may perhaps also be cited as an authority for the respondents; but the question submitted to the Court was, not whether *Witt* was in the legal occupation of the house, but whether he had a sufficient possession to sustain an indictment for burglary. In *Brown's Case* (e) it appeared that *Graydon*, a farmer, had a dwelling-house and cottage under the same roof; but they were not enclosed by any wall or court-yard, and had no internal communication. *Trumball*, a servant of *Graydon*, and his family, resided in the cottage by agreement with *Graydon*, when he entered his service. He paid no rent; but an abatement was made in his wages on account of the cottage. The Judges, *Buller J. dubitante*, held that this was no more than a licence to *Trumball* to lodge in the cottage, and did not make it his dwelling-house, even for the purpose of burglary. *Stock's Case* (g) and *Jobling's Case* (h), are authorities to a similar effect. *The Queen v. Lady Ponsonby* (i) will probably be cited on the other side.

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(a) 2 East, P. C. 501., Foster, 38.

(b) 2 Leach, 930.

(c) Crim. Evid. 320.

(d) 1 Moo. C. C. 248.

(e) 2 East, P. C. 501.

(g) 2 Leach, 1015., 2 Taunt. 339., 1 Russ. &amp; Ry. 185.

(h) 1 Russ. &amp; Ry. 525.

(i) 1 Gale &amp; D. 713.

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There the question was, whether the occupiers of apartments in *Hampton Court Palace* were liable to be rated to the relief of the poor of the parish of *Hampton* in respect of such occupation. The Court held that they were so liable; but the case was decided, not upon the ground that they were tenants of the apartments, but that they had the beneficial occupation of them.

Secondly, there has been no sufficient payment of rates. By stat. 2 *W. 4. c. 45. s. 27.* it is required, "that no person shall be registered, unless he shall have been rated in respect of such premises to all rates made for the relief of the poor in such parish or township made during the time of such his occupation so required as aforesaid, nor unless such person shall have paid, on or before the 20th day of *July* in such year, all the poor's rates and assessed taxes which shall have become payable from him in respect of such premises previously to the 6th day of *April* then next preceding." The voter must pay the rates himself, otherwise he does not gain an interest in the parish in which his qualification is situated. He has no such interest if the landlord pays the rate, and such payment is therefore insufficient. *Rex v. Bridgewater (a)*; *Rex v. Openshaw (b)*; *Rex v. Oakhampton (c)*; *Rex v. Weobley (d)*; *Rex v. Axmouth. (e)* The case last cited may appear to be in opposition to that of *Rex v. Weobley*, but the Court themselves adopt the language of Lord *Kenyon* in that case. The question, moreover, does not depend on the simple fact of payment of rates due from the occupier, even if such a payment could be held to be sufficient within the twenty-seventh section of the Reform Act. The stat. 6 *Vict.*

(a) 3 *T. R.* 550.

(b) 1 *W. Bl.* 463., *Burr. S. C.* 522.

(c) *Burr. S. C.* 5.

(d) 2 *East*, 68.

(e) 8 *East*, 383.

c. 18. s. 75., requires that such person shall have *bonâ fide* paid the rates due. How can it be contended, then, that where premises are let to a man free of rates and taxes, that such person is the party who *bonâ fide* pays the rates and taxes? It will be said on the other side that he pays something that is equivalent. But the policy of the legislature requires him to be a person contributing to the casual and accidental charges of the parish. If he pays a fixed sum, or what is equivalent to a fixed sum, in lieu of rates, it is a matter of indifference to him, whether the rates be more or less in amount. The loss or the gain is the landlord's, and he is in point of fact the party substantially rated. If it should be held that rates may be included in the rent, then a question would arise whether the rent had been paid at the proper time. The rent may not have been paid at all, although the rates have been paid by the landlord to the parish officers. Here, the rates have been paid by the paymaster-general, and not by the occupier. There has never, therefore, been either a direct or indirect payment by an agent authorised by him for that purpose. *The Queen v. South Kilvington. (a)*

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*Cockburn* for the respondents. The decision of the revising barrister was right. It is submitted that the voter occupied as tenant within the twenty-seventh section of the Reform Act. It is conceded that, where a party occupies merely as servant for the purpose of the service, his vote cannot be sustained; but a totally different state of facts is disclosed by the case. In all the cases cited on the other side, where the Court held that

(a) 13 *Law Journ. N. S. M. C.* 3.

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a settlement was not gained by the occupation of a tenement, the pauper was either a domestic or farm servant, or else a clerk or agent, and under the dominion and control of his master. That was the case in *Rex v. Kelstern* (a), where the pauper was a labourer, and the house was necessary for the performance of his service. Is there any thing analagous in the case of an officer of government, who receives, in part remuneration for his services, a house as a residence, and that of a coachman, or an agricultural labourer? *Rex v. Cheshunt* (b) comes a little nearer to the present case, but it stands upon the same footing as the former. There is nothing in the case stated by the revising barrister to shew that the claimant's occupation of the house in the dockyard was ancillary to the service; on the contrary, it is stated that the party had it in part remuneration for his services, and that if it had not been allowed to him in this shape, he would have had it in another. It is found also, that, although he still holds his situation under government, he has now removed altogether from the dockyard; a fact, which, in itself, sufficiently distinguishes the present case from those cited. Although it is conceded by the respondents that, where the party merely occupies for the better performance of his service, no settlement is gained, yet, on the other hand, it is equally clear that, where premises are occupied by a person, and the rent is satisfied, not by a payment in money, but by a render of service, that is sufficient to confer a settlement, and, by parity of reasoning, the right to be registered. In *Rex v. Melkridge* (c), a pauper was permitted by several persons, having a right of

(a) 5 M. & S. 136.

(b) 1 B. & Ald. 473.

(c) 1 T. R. 598.

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common, to occupy a tenement of 10*l.* yearly value, as a reward for his service as a herd, and it was held that that gave him a settlement; the Court saying that the service of the pauper was equivalent to his paying rent. That case is directly in point, and shews that where the occupation is really for the purpose of remunerating a party, he occupies as tenant. As to *Rex v. Snape* (a), the case only amounts to this, that where it is *clear* that the party occupied merely for the purpose of the service, the occupation does not confer a settlement. In *Rex v. Langrville* (b), Lord Tenterden, delivering the judgment of the Court (c), observes, "It has been established, by a series of cases which were considered and confirmed in that of *The King v. Benneworth* (d), that it was a sufficient occupation of a tenement if the pauper had an interest in a part of the profits of the land, by perception by the mouths of his cattle. But it is essential, whether the subject of occupation be the land itself, or a part of its profits, that the pauper should have *an interest* as tenant or occupier, — a possession by mere licence without that interest is not enough." Here, however, there is sufficient to warrant the inference that there was a contract between the parties, and the occupier, therefore, has an interest in the premises. In *Rex v. Lower Heyford* (e), an attorney, who had a cottage and land near his residence, allowed his clerk to occupy them, that he might the more conveniently attend to the business; and suffered him to hold them rent free, as an augmentation of his salary. The clerk was rated as occupier, but the attorney sometimes paid the rates,

(a) 6 *A. & E.* 278.(b) 10 *B. & C.* 899.(c) 10 *B. & C.* 901.(d) 2 *B & C.* 775.(e) 1 *B. & Ad.* 75.

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and when the clerk paid them, the attorney reimbursed him. It was held that the clerk had gained a settlement, by paying the public parochial taxes. That is a strong authority in favour of the respondents. As to the question of rating, it is submitted that the case of *The Queen v. Lady Ponsonby* (a) does not go the length assumed on the other side. The Court seem to have considered the parties as tenants at will, or at sufferance. [Maule J. Rating depends on the statute of *Elizabeth*, which says nothing about "tenant," but only that every occupier shall be rated.] With regard to the cases arising upon indictments for burglary, there are authorities on both sides. *Jarvis's Case* (b), *Margetts's Case* (c), and *Witt's Case* (d), are in favour of the view taken by the respondents.

Then, as to the second part of the question. It is contended on the other side that the tenant ought to lose his franchise, because his rates have been paid for him. That proposition is untenable. It cannot be disputed that in one shape or other the money comes out of the pocket of the tenant. The case finds that the rates were paid by the Crown as part remuneration for his services. The payment, therefore, is made by his authority, because it is made in pursuance of a contract between the landlord and tenant; and the Crown is, consequently, his agent. Would the overseers have been justified in refusing to receive the money from the Crown, or in demanding the rates from the tenant, after they had been paid by the landlord? *Rex v. Cozens* (e) is a direct authority to the contrary. The suggestion

(a) 1 Gale & D. 713.

(c) 2 Leach, 930.

(e) 1 Doug. 426.

(b) 1 Moo. C. C. 7.

(d) 1 Moo. C. C. 248.

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made on the other side, that the object of the legislature, in requiring the payment of rates by the occupier, was to give parties an interest in the parochial concerns of the district in which they reside, is a fanciful argument. All that was intended by the Reform Act was to confer the franchise where a person, possessing property of a certain value, contributed his share to the public and local burdens. The cases which decide that a payment by a landlord is sufficient to confer a settlement upon the tenant are in favour of the claimant; for the stat. 3 W. 3. c. 11. s. 6. under which that settlement is acquired, enacts "That if any person, who shall come to inhabit in any town or parish, shall be charged with and pay his share towards the public taxes or levies of the said town or parish, then he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published as is hereby before required." *Rex v. Oakhampton* (a); *Rex v. Openshaw*. (b) [Maule J. It seems there to have been held that payment by the landlord is sufficient, even where a payment amounting to notice is required. Now here, all that is required is payment, whether amounting to notice or not.] *Rex v. Armouth* (c) is a strong authority for the respondents. *Rex v. Weobly* (d) is altogether a different case from the present. There was no arrangement in that case between the parties. As to the distinction between the twenty-seventh section of the Reform Act, and the seventy-fifth section of the stat. 6 Vict. c. 18. by the introduction of the words *bonâ fide* in the latter section, it is quite clear that there was no

(a) *Burr. S. C.* 5.(b) 1 *W. Bl.* 463., *Burr. S. C.* 522.(c) 8 *East*, 383.(d) 2 *East*, 68.



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*Kinglake*, in reply, referred to *Rex v. Terrott* ; (a).  
*Rex v. Hurdis* (b).

*Cur. adv. vult.*

*Parker's* case, and *Brock's* case were not argued, the facts being substantially the same as in the preceding.

*Kinglake* appeared for the appellant, and *Cockburn* for the respondents, in each case.

*Cur. adv. vult.*

In *Smith's* case,

*Kinglake*, for the appellant, contended, with reference to the second point raised by the revising barrister, that payment by the party of the rates and taxes with his own hand, did not place him in a better position than *Burton*, inasmuch as he was allowed them afterwards in his account with the Board of Ordnance. He referred to *The Queen v. Bridgnorth* (c).

*Cockburn, contra*, cited *Rex v. Lower Heyford* (d).

*Cur. adv. vult.*

The judgment of the Court in *Burton's* case was now delivered by

TINDAL C. J. In this case two questions were raised before the revising barrister, and were argued on the

(a) 3 *East*, 506.

(c) 10 *A. & E.* 66.

(b) 3 *T. R.* 497.

(d) 1 *B. & Ad.* 75.

appeal to this Court : first, whether the occupation by *James Burton* was an occupation *as tenant* within the twenty-seventh section of the statute 2 *W.* 4. *c.* 45.; and secondly, whether, upon the facts stated, he had paid the poor's rates as required by the proviso in that section.

As to the first question, the facts are, that the house occupied by the claimant is situated in the dockyard at *Chatham*; that the claimant is master ropemaker, and as such had the house as his residence; that he paid no rent in money for it, but had it as part remuneration for his service; and no part of it was used for public purposes, the office in which he performed his public services being away from it. If he had not been allowed the house, he would have had an allowance for a house in addition to his salary.

Upon this state of facts, the revising barrister has found, that the claimant occupied as tenant, and the question in effect is, whether the statement of facts shows that the decision is wrong? that is, whether it shows the occupation not to have been in the character of tenant. On the argument, several cases were cited, which bear on the question, whether the house could be called the dwelling-house of the claimant in an indictment for burglary; but that question is so different from the one now in dispute, viz. whether there was a tenancy or not, that we think it unnecessary to notice those decisions. But the cases chiefly relied on, were those settlement cases, in which the question has arisen, whether a servant came to settle on a tenement within the meaning of the statute 13 and 14 *Car.* 2. *c.* 12. The language and object of that act are very different from those of the statute now under consideration; and therefore no similarity of facts in a case arising on the

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one act, can make it a case in point upon a question raised on the other. But, as the Court, in deciding those cases, has considered that the settlement turned on the question, whether the pauper occupied *as tenant* to his master, the decisions are very important on the present inquiry. In those cases, as in this, there was no doubt of the right to exact, and the liability to render service; but in those, as in the present case, the doubt was, whether the relation of landlord and tenant subsisted between the same parties. There is no inconsistency in the relation of master and servant with that of landlord and tenant—a master may pay his servant by conferring on him an interest in real property, either in fee, for years, at will, or for any other estate or interest: and if he do so, the servant then becomes entitled to the legal incidents of the estate, as much as if it were purchased for any other consideration. But it may be, that a servant may occupy a tenement of his master's, not by way of payment for his services, but for the purpose of performing them: it may be, that he is not *permitted to occupy* as a reward, in the performance of his master's contract to pay him; but *required to occupy* in the performance of his contract to serve his master. The settlement cases cited in argument, established, and proceeded on, this distinction. We think it applicable to the present question, and as there is nothing in the facts stated to show, that the claimant was required to occupy the house for the performance of his services, or did occupy it, in order to their performance, or that it was conducive to any other purpose, than any house which he might have paid for in any other way than by his services; and as the case expressly finds, that he had the house as part remuneration for his services, we

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cannot say that the conclusion at which the revising barrister has arrived is wrong. The case indeed states that the claimant was master ropemaker, and *as such* had the house as his residence: but that expression is equally applicable, whether he was made tenant of the house, in payment of his services as master ropemaker, or occupied it for the purpose of performing them. The fact, also, of having a lower salary, in consequence of being allowed a house, though not immaterial, is by no means decisive; for such a fact might exist in a case in which the house was occupied for the purpose of the service, and not in the character of tenant. It may well happen, that *something in the service*, which renders it less onerous, or more pleasant, may cause a reduction of the salary, without being a part of the salary itself. A master may give lower wages in consequence of lodging his servants in his house, instead of requiring them to find lodgings out of it, without making them his tenants. But, in the present case, upon the grounds above stated, we think the juster inference is, that there is an occupation as tenant.

On the second question, it appears that the claimant was rated to the poor rates and assessed taxes, and that they were paid for him in part remuneration of his services. Upon this question it appears to us, that the payment being one to which the claimant was liable, and having been made on his account by those whom he procured to make it by giving value for it, is sufficient within the twenty-seventh section of the statute. Whether it would or would not have been sufficient within the 3 *W. & M. c. 11. s. 6.*, in which rating and payment are made to confer a settlement, by way of substitution or equivalent for notice to the parish; or under 4 & 5

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respect of both houses to all rates made during the period of his occupation of them ; and that all the rates and assessed taxes due from him in respect of them had been duly paid within the time limited by 6 *Vict. c. 18. s. 75.*

An objection was taken that his qualification, consisting not of one house, viz. that of No. 10, *East Street*, but of two houses, No. 16, *West Street*, and No. 10, *East Street*, occupied by him in immediate succession, the description of his qualification in the list should correspond with this fact, and that he ought to have been registered for both the houses which constituted his qualification. I decided that where a person founds his qualification upon different premises occupied by him in immediate succession, conformably to the provisions of the twenty-eighth section of 2 *W. 4. c. 45.*, it is required that he should be registered in respect of all these several premises, and that they should be specifically set forth in the description of his qualification ; and that the appellant, being registered only for one of the houses occupied by him, and that house having been occupied by him only for a period of six months, he had not proved that he was entitled to have his name retained in the list of voters in respect of the qualification described in the list. An additional objection was taken, that there was an insufficient, or inaccurate description of the appellant's qualification, which I had power to correct under the provisions of the fortieth section of 6 *Vict. c. 18.* I decided that when a party was objected to, I had no such power, but that I was bound by one of the provisions of the same section to require him to prove that he was entitled to have his name inserted in the list of voters in respect of the qualification described in such list ; and the appellant having in my judgment

failed to do so, I accordingly expunged his name from the above mentioned list of persons entitled to vote for the borough of *Lewes*.

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The question for the opinion of the Court is, whether, under the circumstances mentioned in the above statement of facts, the name of the appellant was rightly expunged from the said list of voters.

If the Court should be of that opinion, the said list is to stand without amendment; if the Court should be of a contrary opinion, then the said list is to be amended by inserting therein the name of the appellant.

Six other votes depended upon the same state of facts, and the appeals against the decision of the revising barrister were consolidated with the preceding.

*Creasy*, for the appellant, in *Michaelmas* term, *November* 20. There are two questions for the Court in this case. First, whether, in the case of a successive occupation, one house, or more than one, ought to be inserted in the register as the qualification of the voter; and secondly, whether, assuming the insertion of one house to be insufficient, the error is one which the revising barrister has power to amend. With regard to the first question, the cardinal point on which the case will turn is the answer which the Court may think proper to give to this question, viz. what is really the foundation of the voter's qualification? That answer will depend upon the construction which is to be placed upon the twenty-seventh and twenty-eighth sections of the stat. 2 *W. 4. c. 45.*, taken in connection with the thirteenth section of 6 *Vict. c. 18.*, which is almost identical in terms with the forty-fourth section of the former act. The twenty-seventh section of the Reform

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Act enacts, “ that in every city or borough which shall return a member or members to serve in any future parliament, every male person of full age, and not subject to any legal incapacity, *who shall occupy*, within such city or borough, or within any place sharing in the election for such city or borough, as owner or tenant, any house, warehouse, counting-house, shop, or other building, being, either separately, or jointly with any land within such city, borough, or place occupied therewith by him as owner, or occupied therewith by him as tenant under the same landlord, of the clear yearly value of not less than 10*l.*, shall, if duly registered according to the provisions hereinafter contained, be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough : Provided always, that no such person shall be so registered in any year, unless he shall have occupied such premises as aforesaid for twelve calendar months next previous to the last day of *July* in such year ; nor unless such person, where such premises are situate in any parish or township in which there shall be a rate for the relief of the poor, shall have been rated in respect of such premises to all rates for the relief of the poor in such parish or township, made during the time of such his occupation so required as aforesaid ; nor unless such person shall have paid, on or before the 20th day of *July* in such year, all the poor’s rates and assessed taxes which shall have become payable from him in respect of such premises previously to the 6th day of *April* then next preceding : Provided also, that no such person shall be so registered in any year, unless he shall have resided for six calendar months next previous to the last day of *July* in such year within the city

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or borough, or within the place sharing in the election for the city or borough, in respect of which city, borough, or place respectively he shall be entitled to vote, or within seven statute miles thereof or of any part thereof." Looking, then, at the language of this section, it is submitted that it qualifies as a voter for a borough every person, who, on the last day of *July* in each year, shall *occupy* a house of the clear yearly value of 10*l*. That occupation is the foundation of the qualification, or rather, it is the qualification itself. Having given the qualification, the clause goes on to stipulate, that before any party shall be *registered*, and thereby be in a situation to use his qualification, there must have been twelve months' occupation, rating, payment of rates, and residence for six months. The section does not say that if any person shall have occupied for twelve months, and have been rated, and have paid rates, and have resided for six months, he shall be entitled to vote; but the qualification is given for occupation simply. The twenty-eighth section then provides, "That the premises in respect of the occupation of which any person shall be entitled to be registered in any year, and to vote in the election of any city or borough as aforesaid, shall not be required to be the same premises, but may be different premises occupied in immediate succession by such persons during the twelve calendar months next previous to the last day of *July* in such year." Under this section, therefore, if there has been a continued occupation of premises of the same value for a period of twelve calendar months, it is regarded as a mere equivalent for the occupation of one house for the same period. The party votes for the house which he occupies at the end of *July*. The



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stat. 2 *W.* 4. c. 45. and 6 *Vict.* c. 18. contain, in the schedules, forms for the guidance of the overseers, and not one of these forms gives any intimation that it is necessary to insert all the premises occupied in immediate succession within the twelve months. The form given in the Reform Act, Schedule (I). No. 1., uses only the singular, and not the plural number (*a*). So it is with the form No. 4., Schedule (B). in the Registration of Voters Act (*b*). By the thirteenth section of that act it is enacted, “ That the overseers of every such parish or township shall, on or before the last day of *July*

(*a*) The following is the form referred to : —

The list of persons entitled to vote in the election of a member [*or* “members”] for the city [*or* “borough”] of — in respect of property occupied within the parish [*or* “township”] of —, by virtue of an act passed in the Second year of the reign of King *William* the Fourth, intituled “ An act to amend the representation of the people in *England* and *Wales.*”

Christian Name and Surname of each Voter at full length.	Nature of Qualification.	Street, Lane, or other Place in this Parish where the Property is situate.
Ashton, John Atkinson, William Bates, Thomas Bull, Thomas	House Warehouse Shop Counting-house	Church Street. Bolt Court, Fleet Street. Castle Street. Lord Street.

(*b*) The form given is as follows : —

The list of all persons (not being freemen) entitled to vote in the election of a member [*or* “members”] for the city [*or* “borough”] of —, in respect of any rights other than those conferred by an act passed in the second year of the reign of King *William* the Fourth, intituled, “ An act to amend the representation of the people in *England* and *Wales.*”

Christian Name and Surname of each Voter at full length.	Place of Abode.	Nature of Qualification.	Street, Lane, or other Place in this Parish where the Property is situate (if any). [ <i>When the Right of Voting depends on Property.</i> ]

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in every year, make out or cause to be made out, according to the form numbered (3.) in the schedule (B.) to this act annexed, an alphabetical list of all persons who may be entitled to vote in the election of a member or members to serve in parliament for such city or borough, in respect of the occupation of premises of the clear value of not less than 10%. situate wholly or in part within such parish or township, and another alphabetical list according to the form numbered (4.) in the said schedule (B.) of all other persons (except free-men) who may be entitled to vote in the election of such city or borough by virtue of any other right whatsoever, and in each of the said lists the christian name and surname of every such person shall be written at full length, together with his place of abode and the nature of his qualification, and where any person shall be entitled to vote in respect of any property, then the name of the street, lane, and the number of *the house* (if any) or other description of the place where such property may be situate, shall be specified in the list."

The words in this clause are all in the singular number, and seem to contemplate the one particular house which the party may happen to occupy on the last day of *July*. [*Maule J.* In both of the forms to which you have referred, the words, are, "street, lane, or other place *in this parish*."] The overseers of each particular parish are the parties who are to make out the list; not the officers of the borough or place for which the election is to be held. How are the overseers of one parish to know whether a party has occupied a house in another? The clause requires the overseer to make out the list of his own parish. [*Coltman J.* The overseers are to make out a list of persons entitled to vote

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v. but, it is apprehended, those words refer to cases where  
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little of it in another parish, as, for instance, where land  
is in the occupation of the party as well as a house,  
which in itself may not be of sufficient value to confer  
the franchise. A strong argument in favour of the view  
taken by the appellant is also to be deduced from the  
words of the fifty-eighth section of the Reform Act,  
which required that certain questions should be put to  
the voter at the poll. The third question (a) was, "Have  
you the same qualification for which your name was  
originally inserted in the register of voters now in  
force?" If the qualification of the voter consisted of  
more than one house, in the case of a successive occu-  
pation, how could he have answered that question in the  
affirmative?

The legislature not having said that it shall be neces-  
sary to insert in the register all the houses which the  
voter may have successively occupied, and having pre-  
scribed certain forms which the overseers, who are  
often not persons of very refined understandings, are  
to follow, it is submitted that the qualification of the  
party consists of the house occupied by him at the time  
when they are required to make out the list of persons  
entitled to vote.

But, secondly, it is submitted that, even if the Court  
should be of opinion that an error has been committed  
in the description of the voter's qualification, the error

(a) The stat. 6 Vict. c. 18. enacts that no inquiry shall be permitted at  
the time of polling as to the right of any person to vote, except as to the  
identity of the voter, and whether he has already voted.

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was one which the revising barrister might have rectified. The fortieth section of the stat. 6 *Vict. c. 18.* enacts, that “wherever the Christian name, or the place of abode, *or the nature of the qualification*, or the local or other description of the property of any person who shall be included in any such list, and the name of the occupying tenant thereof, shall be wholly omitted in any case where the same is by this act directed to be specified therein, or if any person whose name is included in any such list, or his place of abode, *or the nature or description of his qualification*, shall, in the judgment of the revising barrister, be insufficiently described for the purpose of being identified, such barrister shall expunge the name of every such person from such list, unless the matter or matters so omitted, or insufficiently described, be supplied to the satisfaction of such barrister before he shall have completed the revision of such list, in which case he shall then and there insert the same in such list: Provided always, that, whether any person shall be objected to or not, no evidence shall be given of any other qualification than that which is described in the list of voters or claim, as the case may be, nor shall the barrister be at liberty to change the description of the qualification, as it appears in the list, except for the purpose of more clearly and accurately defining the same; and where the name of any person inserted in any list of voters shall have been objected to by the overseers, or by any other person, and such other person so objecting shall appear by himself, or by some one on his behalf, in support of such objection, and shall prove that he gave the notice or notices respectively required by this act to be given by him, every such barrister shall then require it to be

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proved, that the person so objected to was entitled on the last day of *July* then next preceding, to have his name inserted in the list of voters in respect of the qualification described in such list; and in case the same shall not be proved to the satisfaction of such barrister, or in case it shall be proved that such person was then incapacitated by any law or statute from voting in the election of members to serve in parliament, such barrister shall expunge the name of every such person from the said list.” The revising barrister seems to have thought that this clause gave him no power to amend a misdescription in the qualification, where an objection was raised against its sufficiency. That view of the case would lead to this result, viz. that the amendment would only be made where the revising barrister saw the misdescription himself; but such a construction would make the clause almost wholly inoperative. The act gives the power to amend where the qualification is *wholly* omitted, and here there was only an omission of *part*. It is true that the act says, that the revising barrister shall not allow the party to prove for another qualification, where the voter founds his claim on one which is wholly different from that described; but it is contended, that the barrister has ample power to supply a full and correct description where the overseers have omitted to insert the whole of the voter’s qualification in the list.

*R. C. Hildyard* for the respondent. It is contended that the decision of the revising barrister was not only in conformity with the plain language of the statutes, but with the intention of the legislature. It is said on the other side, that the right to vote depends on the

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occupation of a house, and that occupation for twelve months, rating, payment of rates, and residence, are only conditions precedent to the right to be put upon the register. That argument proceeds upon a fallacious distinction between the right to vote and the right to be registered. The words of the twenty-eighth section of the Reform Act are entirely opposed to the conclusion which has been drawn from the terms of the twenty-seventh clause. That clause enacts, that the claimant may be registered in respect of different premises occupied in immediate succession by him during the twelve calendar months previously to the last day of *July*, "such person having paid, on or before the 20th day of *July* in such year, all the poors' rates and assessed taxes," &c. An argument has also been founded upon the forms given in the schedules annexed to the stat. 2 *W. 4. c. 45.*, and 6 *Vict. c. 18.* The schedules, however, contain forms which are applicable only to a small portion of the qualifications for a city or borough. They say nothing of a "house and land," nor of any "other building," but those which are specified in the twenty-seventh section of the Reform Act. With regard to the heading of the forms being in the singular number, such as "street, lane," &c., it need only be observed, that it would not apply to such a qualification as "house and land." The argument for the appellant, therefore, upon this part of the case, fails altogether. In order to arrive at a correct conclusion, it is necessary to consider what was the intention of the legislature in making provisions for the registration of voters. One of the great objects of the Reform Act was to diminish the expenses of elections. Instead of making inquiries as

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to the validity of the voter's qualification necessary at the time of the election, it was directed that a register should be prepared, and that the list of voters should be made out on or before the last day of *July*. Parties are then allowed till the 25th of *August* to investigate the claims which have been sent in, or the qualifications of those on the lists. The object which the legislature had in view would be entirely frustrated, if, when the lists came before the barrister for revision, the party objected to were allowed to set up a supplementary qualification. The objector would have no means of knowing whether it had a real or an imaginary existence. And, it ought not to be forgotten, that the objector is as much entitled to the benefit of the provisions of the statutes, as the party whose right to be placed on the register he calls in question, as the objector really represents all the *bonâ fide* voters on the list.

Secondly, with regard to the power of the revising barrister to amend the description of the claimant's qualification, it must be borne in mind that there is a considerable difference between the provisions of the fortieth section of the stat. 6 *Vict. c. 18.*, and those of the corresponding section in the Reform Act. The fiftieth section of the latter statute gave the revising barrister power, so far as the words of the clause went, to supply omissions in every claim; but it is believed that the majority of the revising barristers came to a resolution that they would require a claimant to prove his qualification, wherever an objection had been made to it; but that where no objection had been made, they would assume acquiescence on the part of all persons qualified to object, and would supply any omission, upon receiving satisfactory evidence, to enable them to

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do so. That determination seems to have been present to the mind of the legislature when the stat. 6 *Vict. c. 18.* was passed. The fortieth section of that act makes a distinction between cases where the party is objected to, and where he is not. If the name of the party, or his place of abode, or the nature or description of his qualification, be insufficiently described *for the purpose of being identified*, then the barrister is to supply the omission, if the matter omitted be supplied to his satisfaction. Thus, if the number of the house were omitted, the revising barrister, it is apprehended, might exercise the power given him by the act, and insert the number. So, if the party's qualification consisted of a house, which was described as a "building," the barrister might strike out the word "building," and insert "house." But the proviso which follows this part of the clause expressly enacts that, whether any person shall be objected to or not, no evidence shall be given of any *other* qualification than that which is described in the list of voters or claim, except for the purpose of more accurately defining the same; and where the party has been objected to, and notice of objection has been proved, the barrister is to expunge the name of the claimant from the list, unless it be proved to the satisfaction of the barrister that the party was entitled on the last day of *July* to have his name inserted in the list in respect of the qualification described in such list. The barrister is bound, therefore, to hold the party strictly to the proof of his qualification as it is described in the list. The addition of a house in another street would not be within the authority given by the former part of the act. A new and a different qualification would be substituted for the qualification originally in-



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serted in the list, just as much as if "land" were added to a house below the annual value of 10*l*. Then, is there any practical difficulty in ascertaining the premises which the claimant has successively occupied? It cannot be contended that any such difficulty would present itself to the claimant, as he must know what premises he has occupied for the last twelve months; and it would be just as easy for him to communicate the description of them to the overseers, as it would be for the overseers to insert them in the list. Even if the overseers neglect to act upon the information supplied to them before the making out of the lists, the party is not without a remedy; for, by the fifteenth section of the stat. 6 *Vict.* c. 18., every person desirous of being registered for a different qualification than that for which his name appears in the list, may give a notice of claim to the overseers, stating the particulars of his qualification. No difficulty, therefore, can ensue from upholding the decision of the revising barrister on this point. On the other hand, much inconvenience will follow if it should be held that he was wrong. If it should be now determined that the description of a party's qualification may be amended by inserting in the list two or more houses, where he has claimed to vote in respect of the occupation of one, the next question which will arise will be, whether a garden, or a field adjoining a house may not also be added, in order to make up a good qualification; and it will be extremely difficult to decide what omissions the revising barrister may correct, and what he may not.

*Creasy* replied.

*Cur. adv. vult.*

TINDAL C. J. now delivered the judgment of the Court.

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In this case the name of the appellant had been inserted in the list of persons entitled to vote in the election of members for the borough of *Lewes*, in respect of property occupied within the parish of *All Saints*, and the appellant's qualification described in the list was a house in *East Street*. An objection having been made to the appellant's name, he was required by the revising barrister to prove that he was entitled to have his name inserted in such list in respect of the qualification therein described; and the case states that it was proved that the appellant had occupied as tenant a house, No. 10. *East Street*, in the parish of *All Saints*, within the borough, since the 25th of *December* 1842; and that he had removed into that house immediately, and without any interval of time, from another house, situate in *West Street*, in the parish of *St. John*, within the said borough, which he had occupied as tenant for considerably more than six months previous to his removal; and that each of those houses was of the clear yearly value of more than 10*l*. It was objected that upon this evidence it appeared that the appellant's qualification consisted of the occupation by him of the two houses in immediate succession, and not merely of the house in *East Street* described in the list, and therefore that his name should be expunged from the list. It was answered by the appellant, that his qualification was correctly described, and that even if it were not, that the description might be amended by the revising barrister, under the provisions of the stat. 6 *Vict. c. 18. s. 40*. The revising barrister decided that it had not been proved that the appellant was entitled to have his

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name inserted in the list of voters, in respect of the qualification described in such list, and that he had no power to make the amendment suggested by the appellant; and thereupon he expunged the name of the appellant from the list. The question submitted to the opinion of the Court is, whether, under the circumstances stated in the case, the name of the appellant was rightly expunged from the list? and we think that it was. By the stat. 6 *Vict.* c. 18. s. 40. it is enacted, that, whether any person shall be objected to or not, no evidence shall be given of any other qualification than that which is described in the list of voters or claims, and that where the name of any person inserted in any list of voters shall have been objected to, and notice of the objection given, the revising barrister shall require it to be proved that the person so objected to was entitled on the last day of *July* then next preceding to have his name inserted in the list of voters, in respect of the qualification described in such list; and in case the same shall not be proved to the satisfaction of such barrister, he shall expunge the name of such person from the list. The question, therefore, is, whether the appellant was entitled to have his name inserted in the list, in respect of his occupation of the house in *East Street*, without any evidence of any other qualification; or, in other words, whether his qualification to vote consisted of his occupation of the house in *East Street*, or of his occupation in immediate succession of the two houses described in the case.

By the stat. 2 *W.* 4. c. 45. s. 27. it is enacted, that every male person of full age, and not subject to any legal incapacity, who shall occupy within the borough, as owner or tenant, any house of the clear yearly value

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of not less than 10*l.*, shall, if duly registered according to the provisions thereafter contained, be entitled to vote in the election of members to serve in parliament for such borough. Now, if the clause had stopped here, the occupation by the appellant of the house in *East Street*, would have entitled him to vote. But the section proceeds, "Provided always, that no such person shall be so registered in any year, unless he shall have occupied such premises as aforesaid, for twelve calendar months next previous to the last day of *July* in such year." Under this section, therefore, the appellant would not be entitled to have his name inserted in the list of voters, in respect of his occupation of the house in *East Street*, for he had not occupied that house for twelve calendar months. But by sect. 28., it is enacted, that the premises in respect of the occupation of which any person shall be entitled to be registered in any year, and to vote in the election for any borough as aforesaid, shall not be required to be the same premises, but may be different premises occupied in immediate succession by such person, during the twelve calendar months next previous to the last day of *July* in such year. Under this section the appellant was clearly entitled to have his name inserted in the list of voters; and the first question is, whether he was entitled to have it inserted in respect of his occupation of the house in *East Street* alone, or whether his occupation of the house in *West Street* formed a part of his qualification, and ought to have been described in the list. On the part of the appellant it was insisted, that the right to vote for a borough was given to the occupier of premises, of the description and value mentioned in the early part of the twenty-seventh section, without reference to the

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duration of his occupation, provided the occupier's name and qualification were duly registered; and that, although by the proviso added to that section, and by the enactments of the twenty-eighth section, a condition precedent to the registration of such occupier's name and qualification was introduced — that he should have occupied for twelve calendar months, either the premises in respect of which he claimed a right to vote, or those premises and some other similar premises within the borough in immediate succession — yet that the premises in respect of which he was entitled to vote, and therefore the premises to be described as his qualification, were the premises occupied by him on the last day of *July*. And it was urged, that this view of the case was confirmed by the circumstance that it is not required that the period of the occupation should be stated in the lists, and that the forms prescribed in the schedules are not adapted to the description of any other premises than those in the occupation of the voter at the time of the registration, especially where the earlier occupation was of premises in some other parish. But we think that the decision of this question ought not to depend upon a critical examination of the forms in the schedule, which are inserted merely as examples, and are only to be followed implicitly, so far as the circumstances of each case may admit. And, looking at the whole scope and object of the different enactments relevant to this question, we consider that the appellant's title to have his name inserted in the list of voters, rested upon his occupation of the two houses in immediate succession, and that he ought to have been registered for both those houses, the occupation of which in succession constituted his qualification to vote; for we think that the legisla-

ture intended that the registration list should afford such information of the nature and situation of the premises, in respect of the occupation of which each person claimed a right to vote; as would enable the other voters to ascertain by inquiry the sufficiency of the occupation and value of such premises. And it is obvious, that, for such a purpose, in cases of successive occupation, the description of the premises formerly occupied by the claimant would be at least as necessary as the description of the premises still in his occupation; for, without such information, it might be difficult to prevent surprise and fraud on the one hand, or to avoid groundless opposition on the other. And we think the language of the fortieth section of the stat. 6 *Vict. c. 18.*, and of the twenty-eighth section of the stat. 2 *W. 4. c. 45.* sufficiently explicit to carry this intention into effect.

We are, therefore, of opinion that a description of all the premises occupied in succession during the twelve calendar months, should be inserted in the list as forming the voter's qualification. And as the whole object of the notice would be defeated if the omission of any part of such qualification could be remedied at the Court of Revision, we are also of opinion that the addition of the premises in *West Street* to the qualification inserted in the list, would be a change in the description of the qualification, not warranted by the provisions of the fortieth section of the statute of *Victoria*; and that the revising barrister was right in refusing to make such alteration, and in expunging the name of the appellant from the list.

Decision affirmed.

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# CASES

1844.

ARGUED AND DETERMINED

IN THE

## COURT OF COMMON PLEAS

UNDER THE STAT. 6 VICT. c. 18.

IN

MICHAELMAS AND EASTER TERMS,

IN THE

SEVENTH YEAR OF THE REIGN OF VICTORIA.

*April 30.*

ALLAN, Appellant, and WATERHOUSE,  
Respondent. (a)

A notice of objection, delivered open and in duplicate to a postmaster's managing clerk, is sufficient within the stat. 6 *Vict.* c. 18. s. 100.

**T**HIS was a consolidated appeal from the decision of *Edward Erastus Deacon, Esq.*, the revising barrister for the borough of *Bradford*.

The case stated that, on behalf of the objector, it was proved that a proper notice of objection had been delivered to the overseers; and all the directions of the stat. 6 *Vict.* c. 18. were also proved to have been strictly observed, except that the notice directed to the party whose vote was objected to, was delivered open and in duplicate to the postmaster's managing clerk, instead of

(a) See opposite page.

to the postmaster himself. On the production of the stamped duplicate by the party who posted such notice, the revising barrister decided that this was evidence of the notice having been given to the person at the place mentioned in such duplicate on the day on which such notice would, in the ordinary course of post, have been delivered at such place. The name of the party objected to, and those of twenty-eight other persons similarly situated, were then expunged from the list of voters.

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*Bompas Serjt.*, for the appellant, in *Michaelmas* term, *November* 16th. It is submitted that the names of the parties ought to be restored to the list. By the stat. 6 *Vict. c. 18. s. 100.* it is enacted, "that it shall be sufficient, in every case of notice to any person objected to in any list of county, city, or borough voters, and in the livery list of the city of *London*, and also in the case of county voters to the occupying tenant whose name and place of abode appears in such respective list as aforesaid, if the notice so required to be given as afore-

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*November* 13.

(a) When this appeal was called on in the order in which it stood upon the list of appeals, the appellant had not delivered his paper books.

*J. L. Adolphus*, for the respondent, said that his client had delivered paper books to the two junior puisne judges, but that as he had not delivered them to the Lord Chief Justice and the senior puisne judge, he was afraid he was not in a situation to take advantage of the appellant's default.

*TINDAL C. J.* No; if the respondent had delivered them, he might have prayed the judgment of the Court; but as it is, the case must stand over.

the appellant, therefore, ought to deliver paper books to the Chief Justice and the senior puisne judge, and the respondent to the two junior puisne judges of the Court.

The stat. 6 *Vict. c. 18. s. 60.* enacts that all appeals from the revising barristers shall be prosecuted according to the ordinary rules and practice of the Court with respect to *special cases*, so far as the same may be applicable; and



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said shall be sent by the post, free of postage, or the sum chargeable as postage for the same being first paid, directed to the person to whom the same shall be sent, at his place of abode as described in the said list of voters; and whenever any person shall be desirous of sending any such notice of objection by the post, he shall deliver the same, duly directed, open and in duplicate, to the postmaster of any postoffice *where money orders are received and paid*, within such hours as shall have been previously given notice of at such post-office, and under such regulations with respect to the registration of such letters, and the fee to be paid for such registration (which fee shall in no case exceed 2d. over and above the ordinary rate of postage), as shall from time to time be made by the postmaster general in that behalf; and in all cases in which such fee shall have been duly paid, *the postmaster shall compare the said notice and the duplicate*, and, on being satisfied that they are alike in their address and in their contents, shall *forward one of them* to its address *by the post*, and shall *return the other* to the party bringing the same, *duly stamped with the stamp of the said post-office*; and the production by the party who posted such notice of such stamped duplicate shall be evidence of the notice having been given to the person at the place mentioned in such duplicate on the day on which such notice would, in the ordinary course of post, have been delivered to such place." The question for the decision of the Court is, simply, whether the duty of comparing the notice and duplicate is cast upon the postmaster himself, or whether it is one which can be performed by deputy. It is apprehended that it was the manifest intention of the legislature to intrust the discharge of

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this duty to the postmaster alone. One object of the clause was to relieve objectors from the difficulty which formerly stood in the way of giving notices of objections; but it had also another object in view, and that was to protect the parties whose names were on the list of voters. The act, therefore, does not provide that *every* postmaster shall receive and compare these notices and duplicates, but only those at whose offices money orders are received and paid. Those postmasters only are selected for the performance of this duty who may be considered, in an especial degree, persons of integrity and independence. It is to be observed that the act is very precise in requiring that the matters to which the clause relates shall be done by particular persons. The stamped duplicate is not to be evidence of itself: but, in order to make it evidence, it must be produced by the party who posted the notice of objection. It is clear, therefore, that the postmaster cannot delegate a clerk to perform this duty. [*Maule J.* Does the section apply to the General Post-Office in *London*? If so, must the Postmaster-General receive and compare these notices and duplicates?] Perhaps not; but if it should hereafter appear that there is no other postmaster in *London* than the Postmaster-General, that would amount, at the worst, to a *casus omissus* in the statute. It may, however, have been the intention of the legislature not to include *London*. It is clear that *every* place in which there is a post-office was not contemplated, as the section expressly specifies those where money orders are received and paid; and these words would exclude a very large number of places in which there is a post-office. If, therefore, a party lives in a place in the country where money orders are not received and paid

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at the post-office, he cannot send a notice of objection by the post. But further, the duty required of the postmaster more nearly resembles a judicial than a ministerial act. He is to compare the notice and duplicate, and is to satisfy himself that they are alike in their address and in their contents. He must act, therefore, upon his own judgment ; and the distinction between a ministerial and a judicial act is, that in the former the party is not obliged to satisfy his own mind. The postmaster, therefore, cannot appoint a clerk to do this duty for him. Besides, the clerk has not the power to send the letter away which contains the notice of objection. The power to do so is vested in the postmaster alone. Moreover, the postmaster is selected as an impartial and independent person, as he has not a right to vote, which his clerk may or may not have. Again, in the interpretation clause, which is the 101st section of the statute, various clerks and officers are mentioned who are to be included in the words "town-clerk" and "clerk of the peace;" but it is not said that the word "postmaster" shall comprehend and apply to "any deputy or other person executing the duties of such" postmaster. [*Maule J.* What would you say if there were a postmistress?] A duplicate of the notice of objection, stamped by a postmistress, would not be evidence of the delivery of the notice, within the meaning of the act of parliament, the terms of which must be strictly pursued. The interpretation clause provides, that where the subject or context requires it, the singular number shall import the plural, and the plural number the singular ; but it does not say that a word importing the masculine gender only shall extend and be applied to the feminine, or *vice versa*. Upon the whole, there-

fore, it is submitted that, as the objector has not brought himself within the provisions of the act, the revising barrister was wrong in expunging the names of the voters.

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*J. L. Adolphus* for the respondent. One objection raised by the appellant may be conveniently disposed of without entering into the general argument. By the stat. 22 G. 3. c. 41., no post-master, post-master-general, or his or their deputy or deputies, or any person employed by or under him or them in receiving, collecting, or managing the revenue of the post-office or any part thereof, are to vote at elections; and so far, therefore, the clerk of a postmaster is as much removed from political bias as the postmaster himself. It is submitted, also, upon the general question, that it is not open to the appellant to object to the admissibility of the duplicate as evidence of the service of the notice of objection. The act says that the postmaster shall compare the notice and duplicate, and shall forward one of them to its address by the post, "and shall return the other to the party bringing the same, duly stamped with the stamp of the said post-office; and the production by the party who posted such notice of such stamped duplicate *shall be evidence* of the notice having been given." The party who posted the notice did produce the duplicate; and it was, therefore, evidence of the notice of objection having reached the party to whom it was addressed. The duplicate is to be stamped, but the clause does not require it to be stamped by the postmaster. The words "such stamped duplicate" mean merely "duly stamped," and it would be going very far indeed if the Court were to decide that these words must be connected with

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all those in the section which precede them. It has been held by the Courts, that where an instrument is not required by law to be stamped within a particular time after its execution, they will not inquire when the stamp was affixed, nor, if a penalty was incurred, whether the penalty was paid; *Rex v. Preston*. (a) In *Doe d. Duncan v. Edwards* (b), the plaintiff tendered in evidence, in order to prove a material part of his case, a schedule delivered by the defendant as an insolvent debtor. The copy of the schedule was produced, with a seal, purporting to be the seal of the Insolvent Debtors' Court: but no proof was offered that the seal really was that of the Court. The document was admitted, and the Court of Queen's Bench held that it had been properly received in evidence, although in the stat. 7 G. 4. c. 57. s. 76., there are particular directions that the copy of the schedule shall be signed by the proper officer of the Court. Lord Denman C. J. in giving judgment, observed (c), "The principle recognised in practice seems to be that, when the seal purports to be that of the Court, we take notice that it is so." The production, therefore, of the stamped duplicate before the revising barrister was *prima facie* evidence that the notice of objection had been served upon the party to whom it was addressed. If the objector were required to shew that the proper person had received the notice, he would not obtain any relief from the stat. 6 Vict. c. 18., which certainly was intended to release him from difficulties to which he had been formerly subjected.

If, however, the Court should be of opinion that it is

(a) 5 B. & Ad. 1028.

(b) 9 A. & E. 554.

(c) 9 A. & E. 555.

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competent to the appellant to inquire whether the requisites of the act have been observed, it is submitted that the postmaster's clerk was the agent of the postmaster for the purpose of receiving and comparing the notice and duplicate. It must be taken for granted that the legislature was acquainted with the practice at the Post-office. By the stat. 7 *W.* 4. and 1 *Vict.* c. 33. s. 2., the Postmaster General, by himself or by his deputies and their respective servants and agents, is to have the exclusive privilege of conveying letters (subject to certain exceptions) from one place to another, and of performing all the incidental services of receiving, collecting, sending, despatching, and delivering them. By the ninth section of the same statute, the Postmaster General is empowered to appoint deputies, where posts or post communications are established. The postmaster at *Bradford*, therefore, being the deputy of the Postmaster General, the postmaster's clerk, as his agent, was authorized by the statute to "receive and despatch" the letter containing the notice of objection. There is nothing in the act which is to be done, or in the nature of the employment, which makes the personal execution of the duty by the postmaster indispensable. The law on the subject of the execution of an office by deputy is laid down in *Bac. Abrid. Offices*, (L), and *Com. Dig. Officer*, (B 1. 2. 5.). In *Midhurst v. Waite* (a), which was an action by an innkeeper against a deputy high-constable, for billeting soldiers upon him, Lord *Mansfield* C. J., in giving judgment, says (b), "It is taking the definition too large, to say that every act

(a) 3 *Burr.* 1259.(b) 3 *Burr.* 1262.

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where the judgment is at all exercised, is a judicial act.” In the present case all that is required to be done is to compare one letter with another, and see that the contents correspond. The performance of that duty would call for an exercise of the judgment, but so would the direction of a letter to a barrister on circuit, who might happen to have left the town to which the letter was originally addressed. In altering the direction, the clerk would exercise a sort of judicial discretion; but the act would be merely ministerial. In *Phelps v. Winchcomb* (a), a question was raised whether a constable might make a deputy to arrest a person, upon a warrant directed to him by a justice of the peace; and it was held that he might. It is submitted that, in the present case, the word “postmaster” includes his servant or agent; but if the language of the act be of doubtful meaning, the argument of inconvenience will apply. The appellant has been driven to the admission that it is at least doubtful whether there is any postmaster in *London* authorized to receive and compare these notices and duplicates. If that were so, the greatest inconvenience would be the result. [*Maule J.* The 100th section refers to the livery of *London*; so that it is clear that the persons who framed the act had *London* in view. *Erskine J.* It would seem that the appointment of certain hours for the performance of the duty in question was intended to suit the convenience of the postmaster.] It would be equally convenient to his deputies, particularly in large towns, such as *Liverpool*, *Manchester*, or *Bristol*. At all events, supposing the postmaster to have neglected his

(a) 3 *Bulst.* 77.

duty, the public ought not to be prejudiced; *Leuk. v. Howell* (a). It appeared in that case that an agreement had been made by the defendants with one *Richard Enys*, a deputy of the deputy of the customer in *Penryn*, to answer to the Queen the customs and duties which should be found due upon all goods which were the subject of the information; and the Court said that *Richard Enys* "was deputy *in facto*, and exercised the place in the custom-house; and, although he were not *de jure*, that shall not prejudice the merchants, who made their compositions with him." In *Parker v. Kett* (b), a deputy *pro hac vice* of a deputy-steward of a manor took a surrender of copyhold lands, and it was held that, admitting the authority to have been originally defective, he was a sufficient steward *de facto*, and that the surrender was for that reason good. So here, the duplicate and notice have been compared by the postmaster *de facto*. Taking, therefore, into consideration the fact that a statutory proof has been given of the service of the notice, and also that the act of comparing the duplicate with the notice of objection is merely ministerial, and may, therefore, well be performed by deputy, and that, under any circumstances, the public ought not to suffer from the postmaster's neglect of duty, it is submitted that the service of the notice of objection was good, and that the decision of the revising barrister was right.

*Bompas* Serjt. replied.

*Cur. adv. vult.*

(a) *Cro. Eliz.* 533. (b) 1 *Salk.* 95. *S. C.* 1 *Lord Raym.* 658.



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The judgment of the Court was now delivered by TINDAL C. J. The question before us in this case was, whether the delivery of the notice directed to *William Allan*, the person whose vote was objected to, was a sufficient delivery within the meaning of the 100th section of 6 *Vict. c. 18*.

The objection taken before the revising barrister was, that the notices, both open and in duplicate, were delivered to the *postmaster's managing clerk* instead of the *postmaster himself*, who was proved to be absent from *Bradford* at the time such notice was delivered, and that the duties, as well of comparing the notice with the duplicate, as of stamping and returning the latter to the party bringing the same, were performed by the managing clerk, and not by the postmaster himself. And whether this was a sufficient compliance with the requisites of the 100th section of the statute, was the question. The revising barrister held that it was; and, upon consideration, we think his decision is right.

I must confess that my mind was at first strongly inclined to the opinion that the proper construction of the statute required the several acts specified in the 100th section to be performed by the postmaster; founding my opinion principally on the ground that the postmaster is named in the section without any mention of a deputy or assistant; and that the interpretation clause (sect. 101.), which in some instances authorises acts directed to be performed by principals, to be performed by subordinate officers, is silent as to the office of postmaster. But, upon further consideration, I agree with my brethren in thinking that the intention of the legislature was to authorise these acts to be done by a clerk

or servant of the postmaster at the office, acting in his aid and assistance, and under his direction and controul.

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That the term, "postmaster," where it first occurs in the section, cannot be strictly and literally confined to the postmaster personally, seems necessarily to follow from the extreme inconvenience that must result if such a construction should be adopted. According to the terms of the act, the notice and its duplicate are to be delivered to the postmaster. The delivery, therefore, even to a clerk or servant at the office, although all the subsequent duties were performed by the postmaster himself, would, upon that construction, be no compliance with the statute. The very hand of the postmaster himself must be that into which the notice is delivered. But the postmaster may be personally unknown to the party who brings the documents. What evidence is he to furnish himself with, that the delivery was made to the real postmaster, if that point should afterwards be contested? In what state of uncertainty must the party who sends his notice by the post be left, if, at the time when he means to avail himself of it, he is liable to be defeated by evidence that it was not the postmaster himself, but a clerk, who took it from his hands? The same difficulty would equally apply to the performance of the other duties imposed on the postmaster; for, it would be dangerous and inconvenient that, after the objecting party has complied with the requisites of the statute so far as he was able, evidence might be given that the postmaster was disabled by illness to attend personally at the time, or absent from some other unknown cause; and that the duties were performed (as in this instance) by his managing clerk. And, further,

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if the statute meant that in every case the comparison of the two documents must be made by the postmaster himself, it is obvious that in populous places, take *London*, for example, where a great number of these notices might come at the same time, and immediate transmission might be necessary, a compliance with the statute would be absolutely impracticable, if the eye and mind of the postmaster himself was essential to give validity to the notice, and the assistance of a clerk or servant inadmissible.

That the duty required by the act may as well be performed by an assistant managing clerk as by the postmaster himself, is undeniable. It cannot be said with any ground of reason, that the comparing the two documents together, and pronouncing them to agree, is a judicial act; the receiving the documents, the stamping and returning one of them to the person bringing them, it is needless to say are ministerial acts, and those of the very lightest order. We must therefore think, if the legislature had, for any reason, intended to confine the performance of the duty to the postmaster personally, there would have been an express provision to that effect; and that all that was required by the legislature was, that the party should deliver the notice, open and in duplicate, at the proper post-office, for examination within the hours properly notified under the act; that he should pay the proper fee for its registration, and wait for and receive back one of the duplicates stamped with the post-office stamp, after which the production of such stamped duplicate is made sufficient evidence of the service of the notice. And, as this appears to have been substantially complied with in the present case, we hold the objection to the notice fails, and that the de-

cision of the revising barrister is right, and must be affirmed.

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Decision affirmed.

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DOBSON, Knight, Appellant, and JONES, Respondent.

April 30.

UPON an appeal from the decision of the revising barrister for the borough of *Greenwich*, the following case was stated for the opinion of the Court:

“ Borough of *Greenwich*, to wit. } At the Court held before me, *James Espinasse*, Barrister-at-Law, duly appointed to revise the list of voters for the borough of *Greenwich*.

“ *William Jones* objected to the name of *Sir Richard Dobson* being retained upon the list of voters entitled to vote in the election of members of parliament for the borough of *Greenwich*, in the parish of *Greenwich*, in respect of the qualification for which his name was inserted in the list, — that is to say,

House | Infirmary, *Greenwich Hospital*. |

“ The facts of the case were as follows : — The appellant, who is the surgeon to *Greenwich Hospital*, has occupied a house at the Infirmary at the Hospital for the last nineteen years, and upwards; it is a house appropriated for the surgeon of the Hospital, and he

The appellant, the surgeon of *Greenwich Hospital*, occupied, as such, a house belonging to the Commissioners of the Hospital, in the infirmary, (which house was appropriated to the surgeon for the time being,) and had occupied it ever since he was first appointed. By the Admiralty regulations the officers of the hospital are to inhabit the apartments assigned to them, and no exchanges, &c. can be made without the permission of the Lords Commissioners. The surgeon is only removable by the Admiralty, and that for

misbehaviour. *Held*, that under these circumstances the appellant did not occupy either as owner or tenant, within the meaning of the stat. 2 W. 4. c. 45. s. 27.

The name of the appellant was on the rate books, as rated for the house, but neither rates nor window taxes had been demanded of him, nor had he paid or tendered the amount, which was paid by the Commissioners of the Hospital. *Quære*, whether such payment was a sufficient payment by the occupier of the premises, within the twenty-seventh section of the stat. 2 W. 4. c. 45.?

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occupies it as such. He took possession of the house upon being appointed surgeon, and has occupied it ever since. The house is of the clear yearly value of 10*l.* and upwards. The furniture in the house belongs to him. He did not pay for any fixtures on going into the house, and if any repairs are required, he applies to the Commissioners of the Hospital, by whom whatever is necessary is done. The name of the appellant is upon the rate books, as rated for the house, and the rates and window tax in respect of it have been paid. It appeared in evidence, that no poor rates or window tax have ever been demanded from the appellant, nor has he ever paid, or tendered, the amount of any rate or tax for the said house; but that the rates and window tax have always been paid by the Commissioners of the Hospital. It was also stated by the appellant, that he had never had any communication with the Lords Commissioners of the Admiralty, by whom he was appointed surgeon to the Hospital, upon the subject of the payment of the rates. The appellant stated that he had a written appointment, but he did not produce it, nor shew by any evidence by what tenure he holds the office of surgeon. A printed paper, purporting to be particulars of part of an order in council of the 23d of *January* 1805, containing certain orders, rules, and regulations, was produced by the appellant, and which he stated he had received from the office of the Inspector General of Hospitals at the Admiralty Office, containing the following order : —

‘ Surgeons of Hospitals, when not provided with a residence within the Hospital, to be allowed 15*s.* a week lodging money.’

“ A book was also produced, copies of which had been

furnished by the government to the different officers of the Hospital, containing regulations established by the Lords Commissioners of the Admiralty, for the government of *Greenwich Hospital*, dated *June 4th*, 1829, and one of those regulations is as follows:—

‘ All officers and others having separate apartments are to inhabit those assigned to them, and no exchanges, or other appropriation of apartments, or alterations therein, are to be made without our express permission. They are to use their best endeavours to preserve them unimpaired, and in a neat and proper state of cleanliness and repair, and they will be required to make good any loss or injury arising from negligence or inattention on their parts.’

“ The regulations above referred to, were made by the Lords Commissioners of the Admiralty, under and by virtue of an act of parliament, 10 G. 4. c. 25., intituled ‘ An Act to provide for the better Management of the Affairs of *Greenwich Hospital* ;’ by sect. 3. of which act it is enacted, ‘ That the whole of the affairs of the said Royal Hospital, and the Commissioners of *Greenwich Hospital* thereby appointed, and their successors to be appointed as thereafter directed, and all other the officers and persons appointed to the said hospital, and to any situations connected therewith, and to the schools of the said hospital, shall be under the authority, control, and direction of the Lord High Admiral, or commissioners for executing the office of Lord High Admiral for the time being ; and the appointment of all officers of the said hospital, civil and military, (except of the Governor, Lieutenant-Governor, and Commissioners of the said hospital, who shall be appointed by his Majesty, his heirs and successors ; and the appointment

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of the chaplains thereof, and of the rectors, vicars, and perpetual curates of the livings and chapelries belonging, or which may belong, to the said hospital), and the establishing of rules, orders, and regulations for the guidance of the Commissioners of *Greenwich Hospital*, and their successors, in the management of the estates and property of the said hospital, and the admission of officers, pensioners, and nurses into the said hospital, and the salaries to be paid to all such officers and persons respectively, shall be exercised by, and vested in, the Lord High Admiral, or Commissioners for executing the office of Lord High Admiral for the time being, who shall have full power to remove from the said hospital, and from any situation connected therewith, any officer or other person as aforesaid, (except the Governor, Lieutenant-Governor, and such Commissioners, Rectors, and Curates), who shall be guilty of any misbehaviour in their said respective situations or offices.'

"I was of opinion upon the facts above stated,

"1st, That the appellant did not occupy as owner or tenant, within the meaning of the statute 2 *W. 4. c. 45. s. 27.*; and,

"2dly, That not having paid the rates and taxes pursuant to the enactment in the same section, he was not entitled to have his name retained upon the list, and I therefore allowed the objection, and expunged his name from the list accordingly."

The case was argued by

*Byles* Serjt. (with whom was *T. Sanders*), for the appellant, in *Michaelmas* term, *November 20th.* There are three points in this case for the consideration of the

Court. First, did Sir *R. Dobson* occupy as owner within the meaning of the twenty-seventh section of the Reform Act? Secondly, if he did not occupy as owner, did he occupy as tenant? And, thirdly, has he paid rates and taxes within the meaning of the same section?

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It is submitted, in the first place, that he occupied as owner. By the stat. 10 G. 4. c. 25. s. 1., the corporation of the Commissioners and Governors of *Greenwich Hospital* was dissolved, and by sections 2. and 25. the estates of *Greenwich Hospital*, including the Hospital itself, are vested in a new body, called "The Commissioners of *Greenwich Hospital*." The legal estate in the house which Sir *R. Dobson* occupied is, therefore, vested in the Commissioners. Upon reference, however, to the third section of the act, it will be seen that the Lords Commissioners of the Admiralty have a general control over the affairs of the Hospital, and over all appointments therein; and it is further provided that the Admiralty shall have power to remove any officer or person appointed (except the Governor, Lieutenant-Governor, Commissioners, Rectors, Vicars, and Curates mentioned in a former part of the act), who shall be guilty of any misbehaviour in their respective situation or offices. As Sir *R. Dobson*, therefore, can only be removed from his appointment as surgeon to *Greenwich Hospital* by the Admiralty, and that for misbehaviour, which the law will never presume, he holds his appointment for life. In *Bac. Abrid. Offices* (K), it is said, "If an office be granted to a man to have and enjoy so long as he shall behave himself well in it, the grantee hath an estate of freehold in the office; for since nothing but his misbehaviour can determine his interest, no man can prefix a shorter term than



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his life; since it must be his own act (which the law does not presume to foresee) which only can make his estate of less continuance than his life; so if the office had been granted to a man *quamdiu se bene gesserit tantum*, his estate had not been less for the word *tantum*; for a grant to a man for so long time as he shall behave himself well, are (a) of equal extent, and his misbehaviour in each case determines his interest.” Now, in the present case, the appellant has occupied a house in the infirmary for the last nineteen years, and the case finds that it is a house appropriated for the surgeon of the Hospital, and that Sir *R. Dobson* occupies it as such. His residence in the house is annexed to his office of surgeon. He is, therefore, its owner, in the ordinary and popular sense of the word. It is clear that, if he had no right to vote for the borough, he would, under the circumstances stated in the case, be entitled to a vote for the county; *Rogers on Elections* (b), *Elliott on Registration*. (c) A parish clerk, his office being held during good behaviour, has been held entitled to a vote for the county. So again, in the case of a schoolmaster, appointed for life, and also in the case of perpetual curates. And, with respect to the chaplains of Roman Catholic chapels, Mr. *Elliott* says (d), “It is believed that they are appointed by the bishop or vicar apostolic of the district, and have appointments for life. If this be so, and they have a sufficient interest in lands or tenements by virtue of their office, they will be entitled to vote.” The present is a much stronger case than any of these examples. The will of two parties must concur before Sir *R. Dobson* can be

(a) *Sic.*

(c) 2d ed. 22.

(b) 6th ed. 126.

(d) 2d ed. 31.

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removed from the house which he occupies. The Commissioners of *Greenwich Hospital* alone can maintain ejectment against him, and then only when the Lords of the Admiralty have removed him from his appointment for misbehaviour. It never can be contended that the word owner in the twenty-seventh section of the Reform Act, means the person who has the strict legal title to the premises as owner. If it were so, a party who had mortgaged the premises in fee, or for a term, would have no vote; neither would a *cestui que trust*.

Secondly : Sir *R. Dobson* is, at least, a tenant at will. As against a wrong-doer, he might maintain trespass; and it is immaterial to consider whether he could bring an action of trespass against his landlord, because the entry of the landlord would be a determination of the will. But, could the landlord maintain trespass, or bring ejectment against the appellant, without a previous demand of possession? It is submitted that he could not. In *Rex v. Chediston* (a) the marginal note is this : "The pauper, who rented a farm in *C.*, assigned it to *P.*, upon trust to cultivate it and pay the pauper's debts, &c. The lease expired in 1817; no settlement of accounts took place; but *P.*, without the authority of the pauper, then hired a house in *H.* at the yearly rent of 18*l.*, to which the pauper and his family removed, and they resided there for more than two years. The pauper never paid any rent or taxes; but *P.* was rated, and paid the rent and taxes: *Held*, that the pauper gained a settlement in *H.* by the occupation of the house." In giving judgment, *Bayley J.* said (b), "It appears to

(a) 4 B. &amp; C. 230.

(b) 4 B. &amp; C. 233.

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me, on this state of facts, that there was a sufficient coming to settle on a tenement in the parish of *Halesworth* to give the pauper a settlement in that parish. There may be a difficulty in saying that *Page* was agent : but then it is clear that *Squire* (the pauper) was tenant at will to him." And *Holroyd J.* (a) added, "The pauper occupied the house by the permission of *Page*, who hired it for that purpose. That occupation continued upwards of two years, and had a burglary been committed in the house during that period, it must, in an indictment, have been described as the dwelling-house of *Squire* ; the case contains no statement of any occupation by *Page*. *Squire* might have maintained trespass if his possession had been invaded ; that makes him at least tenant at will to *Page*." So here, as Sir *R. Dobson* might maintain trespass against a stranger who had disturbed his possession, he is, at least, a tenant at will to the Commissioners of *Greenwich Hospital*. In *Rex v. Lakenheath* (b) the master of a charity-school, who was removable from his office at pleasure, had resided for seven years, rent free, in a house of the annual value of 10*l.*, where his predecessors, other parish schoolmasters, had resided before him, and he underlet part of the house to the parish at an annual rent. The Court held that the pauper had gained a settlement thereby ; and *Abbott C. J.*, in giving judgment (c), cited, as a decision governing that case, *Rex v. Fillongley* (d), where the pauper's brother gave him a close, saying, "I'll give you a close to enjoy as long as I please, and to take again when I please, and you shall pay nothing for it." This, his lordship said, in the opinion of *Buller J.*, made

(a) 4 *B. & C.* 234.(c) 1 *B. & C.* 534.(b) 1 *B. & C.* 531.(d) 1 *T. R.* 458.

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the pauper a tenant at will. *Holroyd J. (a)* also observed, that he thought that the schoolmaster was tenant at will of the house. These two cases, it is contended, are decisive to shew that, at any rate, Sir *R. Dobson* would have occupied as tenant, within the meaning of the twenty-seventh section of the Reform Act, even if there had been nothing to control the decision of the Commissioners of *Greenwich Hospital*. But the facts found by the revising barrister place the appellant in a much stronger position, as there is a bridle on the exercise of their will, since Sir *R. Dobson* cannot be removed from the house without the consent of the Lords of the Admiralty.

Thirdly : it is submitted that there has been a payment of the rates and taxes by the appellant. It is stated in the case that the rates and window-tax have always been paid by the Commissioners of the hospital ; but the name of the appellant is on the rate books, as rated for the house, and he is liable, under the stat. 43 *Eliz.*, as occupier, to the payment of the rates. The rates have been paid *for* him, and consequently *by* him. If one man agrees to pay another's debt, the payment operates as a discharge of the debtor's liability. *Littleton* says, in section 334 of his *Tenures*, " If a feoffment be made in mortgage upon condition, that the feoffor shall pay such a sum at such a day &c. as is betweene them by their deed indented, agreed, and limited, although the feoffor dyeth before the day of payment, &c. yet, if the heire of the feoffor pay the same summe of money at the same day to the feoffee, or tender to him the money, and the feoffee refuse to receive it, then may the heire enter into the lands ; and yet the condition is,

(a) 1 B. & C. 535.

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that if the feoffor shall pay such a sum at such a day &c., not making mention in the condition of any payment to be made by his heire, but for that the heire hath interest of right in the condition, &c., and the intent was but that the money should be paid at the day assessed &c., and the feoffee hath no more losse, if it be paid by the heire, than if it were paid by the father &c.; therefore, if the heire pay the money, or tender the money at the day limited &c., and the other refuse it, he may enter &c. But if a stranger of his own head, who hath not any interest &c., will tender the aforesaid money to the feoffee at the day appointed, the feoffee is not bound to receive it." Upon this last passage, Lord Coke observes (a), "But if any stranger *in the name* of the mortgageor or his heire (without his consent or privity) tender the money, *and the mortgagee accepteth it*, this is a good satisfaction, and *the mortgagor or his heire agreeing thereunto* may re-enter into the land; *omnis ratihabitio retrotrahitur et mandato æquiparatur.*" So in *Vin. Abr.* tit. *Ratihabitio*, 11., a passage from 3 *Bulstr.* 149., is cited, where Coke C. J. said, "If *A.* is bound to pay money at *Coventry*, and a *stranger unknown* to him *pays* the money, and he *agrees* to it, by this he shall be discharged." It is submitted that a payment, if not by a stranger, would discharge the tenant, even without a subsequent ratification by him. Suppose an action of replevin brought, and a plea of *rien in arriere*: if the landlord has accepted the rent as coming from the tenant, how must the issue on that plea be found? Here, however, there has been something more than a subsequent ratification of payment by the appellant, as there is evidence of a prior agreement

(a) 1 *Inst.* B. 3. c. 5. 207 a.

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between the parties that the rates should be paid by the Commissioners of the hospital. [*Maule J.* What evidence is there of such an agreement to be found in the case?] It is found as a fact that *Sir R. Dobson* did not pay the rates, but that they had always been paid by the Commissioners of the hospital. *Sir R. Dobson* knew that they were due, and that they were paid by his landlord, and this, after the first half-year's rates were paid, amounted to an agreement that they should be paid in future by the landlord. With regard to the case of *The Queen v. South Kilvington (a)*, which was cited the other day in the argument in *Wright v. The Town Clerk of Stockport (b)*, the judgment of the Court was a very short one, and does not appear to have been very fully considered. The case of *The Queen v. Bridgnorth (c)* decided, indeed, that payment of rates, to entitle a person to be put on the burgess list of a borough, under the stat. 5 & 6 *W. 4. c. 76. s. 9.*, must be a payment by the party's own act; and that it was not sufficient that another person, without his authority, paid the rates for him. But that case is distinguishable from the present, as the rates, if paid under an agreement, would not be paid by a volunteer. *Rex v. Lower Heyford (d)* is in favour of the appellant. With regard to the words "*bonâ fide*," which are introduced in the seventy-fifth section of the stat. 6 *Vict. c. 18.*, they do not mean that there shall be a personal, but a real payment.

*Kinglake* for the respondent. It is contended on the other side, that the surgeon of *Greenwich Hospital* must be considered as owner of the house in which he resides,

(a) 13 *Law Journ. N. S. M. C. 3.*(b) *Antè*, p. 41.(c) 10 *A. & E. 66.*(d) 1 *B. & Ad. 75.*

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because he is in possession of an office, and that the house must be taken to be annexed to that office. But his appointment to the post of surgeon is not an office in the legal sense of the term, and does not differ in any respect from the appointment of a surgeon by the Lords of the Admiralty to a ship of war. An office in law is one in which profit or emolument is derived from the office itself, and not from a collateral fee in the shape of a salary. The stat. 10 G. 4. c. 25. empowers the Admiralty to appoint pensioners and nurses as well as a surgeon, and if the argument for the appellant be good for any thing, a nurse of the hospital has an office as well as the surgeon. Even, however, if this were an office known to the law, the grant would be bad, no written appointment being produced, and an appointment by parol can only be held at the will of the person granting the office. The case of a parish clerk is not analogous to the present, as he holds an office at common law. In *Bartlett v. Downes* (a), the question was raised whether the lord of a manor might, by deed, grant the stewardship of the manor and of the courts thereto belonging for the life of the grantee, and *Abbott* C. J., in delivering the judgment of the Court (b), refers to the language of Lord Coke in 1 *Inst.* 233 b. Lord Coke says, "Where an officer hath no other profit but a certain collateral fee, the grantor may discharge him of his service, the discharge whereof is but labour and charge to him, but he must have his fee;" and in the same page he proceeds: "If a man doth grant to another the office of the stewardship of his courts of his manors, with a certain fee, the grantor cannot discharge him of his service and attendance,

(a) 3 B. &amp; C. 616.

(b) 3 B. &amp; C. 619.

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because he hath *other* profits and fees belonging to his office, which he should lose if he were discharged of his office." The distinction, therefore, is clear, that where there are certain fees and emoluments attached to an office, and a party is put in possession of the office, he cannot be removed from the enjoyment of those fees; but if he be put into an office to perform certain services, he may be discharged, because he only receives his fees, and nothing from the office itself. Sir *R. Dobson*, therefore, is at most a salaried servant of the Commissioners. It is clear that there is no annexation of a house in the Hospital to the office of surgeon. The order in Council referred to in the case directs that surgeons of hospitals, *when not provided with a residence within the hospital*, are to be allowed 15s. a week lodging money. It is clear, therefore, from the statement in the case itself, that the appellant was appointed simply as surgeon to the Hospital, and that he has no rights different from those of surgeons in the different charitable and other public institutions. Reference has been made on the other side to the right of parish clerks and schoolmasters to vote, but they do not vote in respect of the offices which they hold, but in respect of lands or tenements of the annual value of 40s. When such lands or tenements are held with those offices, it is presumed that there has been some old deed of endowment, under which the party is entitled to vote as a freeholder. In *Rex v. Lakenheath* (a), it could only have been contended that the party was tenant at will of the premises. *Rex v. Chediston* (b) does not apply. There was in that case no service to be performed by the pauper. Here the appellant was placed in a house in the Hospital to per-

(a) 1 B. &amp; C. 531.

(b) 4 B. &amp; C. 230.



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form the duties of a surgeon, and he is therefore, neither the owner nor the tenant of that house within the meaning of the twenty-seventh section of the Reform Act.

Lastly, there has been no such payment of rates and taxes as is contemplated by the Reform Act. In *The Queen v. Bridgnorth* (a), it was decided that where a person, without any previous authority, or any contract or agreement between the parties, goes and pays the rates of another, the party whose rates are thus paid does not thereby gain a title to be placed on the burgess list of a borough, under the provisions of the stat. 5 & 6 W. 4. c. 76. s. 9. It must be a payment by the party's own act. In *The Queen v. Melsonby* (b) which was a case arising upon the construction of the stat. 1 W. 4. c. 18. s. 1., the Court of Queen's Bench acted upon the same principle. The facts were that one *Merryweather*, who was the tenant of premises from year to year, on a hiring from *Martinmas*, at 10*l.* rent, payable half-yearly, gave them up to the pauper in *January* 1831, and the landlord then agreed to accept the pauper as yearly tenant from *Martinmas* to *Martinmas* on the same terms, the pauper undertaking to pay the current half-year's rent. The pauper occupied from *January* 1831, to *October* 1832; he paid 5*l.* rent for the preceding half-year at *May-day* 1831, and at *Martinmas* the next half-year's rent of 5*l.* In *October* 1832, the pauper gave up the premises to one *Rhodes*, upon an agreement with him that *Rhodes* should take the pauper's furniture and fixtures at 9*l.* 5*s.*; and in consideration thereof pay the landlord the rent due from *Martinmas* 1831. The landlord agreed with *Rhodes* and the pauper to accept *Rhodes* as his tenant, and received an undertaking from

(a) 10 A. &amp; E. 66.

(b) 12 A. &amp; E. 687.

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*Rhodes* to pay the rent due from *Martinmas* 1831. No rent whatever was paid by *Rhodes*, and at *Martinmas* 1833, the landlord distrained, and sold the goods seized, which produced enough to pay the whole rent. Among the articles sold under the distress were some which had been transferred from the pauper to *Rhodes*, consisting of fixtures and furniture to the value of 5*l.*; but there was no specific account of the sum produced by these articles. The Court held that the rent due in respect of the pauper's occupation from *Martinmas* 1831 was not paid by him; and *Williams J.* observed (*a*) "One object of this statute was to put an end to constructive payments of rent which had perplexed the courts of quarter session. If the terms of the statute are adhered to, and actual payment of the rent insisted upon, no difficulty will arise." And *Coleridge J.* said (*b*), "It is urged that the landlord agreed to this; but he only agreed to accept the new man as tenant, and received his undertaking for the arrear of rent. Even if that party had paid it immediately, it would be a stretched construction to call this a payment by the pauper. But the contract was not acted upon; and then the landlord exercised his right of distraining for the rent due. Upon whose property did he distrain? That of the actual tenant. Can it be said that this was a payment of rent for the last half-year of the pauper's occupation, 'by the person hiring' the premises?" To satisfy the Reform Act it is not enough that the rates shall be paid, but there must be a payment by the party occupying as owner or tenant. In the present case there has been no money payment at all by the person in actual occupation. It is not like a case where the tenant gives his

(*a*) 12 *A. & E.* 694.

(*b*) 12 *A. & E.* 695.

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landlord a larger amount of rent, instead of paying rates, and therefore it cannot be contended that, when the tenant pays the rent to the landlord, he hands over to him the amount of the rates. The only mode in which Sir *R. Dobson* could pay rent would be by a render of services. It is submitted, therefore, that there has not been a sufficient payment of rates and taxes.

*Byles Serjt.*, in reply. The decision in *The Queen v. Melsonby (a)* does not affect the present case. There was not a payment of rent made by any body, and the facts stated in the case could not have been pleaded as payment. Here Sir *R. Dobson* really pays 15s. a week, which is appropriated to him by an order of the King in council, and he gives up that, and his services besides, for a house free of rates and taxes.

*Cur. adv. vult.*

TINDAL C. J. now delivered the judgment of the court.

In delivering our opinion upon a former case, in which *Hughes* was the appellant, and the overseers of the parish of *Chatham* the respondents, we laid down at some length the principle upon which we thought the class of cases to which the present appeal belongs ought to be decided (*b*): and we drew the distinction between those cases where officers or servants in the employment of the government are *permitted* to occupy a house belonging to the government, as part remuneration for the services to be performed, and those in which the places of residence are selected by the government, and the officers or servants are *required* to occupy them, with a view to the more effectual performance of the duties or

(a) 12 A. & E. 687.

(b) See *antè*, p. 70.

services imposed upon them. And upon that occasion we declared our opinion that those officers or servants who fell within the first description might properly be considered to occupy as tenants, although the residence was allotted to them as such officers and servants, and although they might, if such residence had not been allotted to them, have had an additional allowance for lodging money; whilst, at the same time, we stated that the relation of landlord and tenant could not be created by the appropriation of a particular house to an officer or servant as his residence, where such appropriation was made not with a view to the remuneration of the occupier, but to the interest of the employer, and the more effectual performance of the service required from such officer or servant: upon the same principle as the coachman who is placed in rooms of his master over the stable, the gardener who is put into a house in the garden, or the porter who occupies the lodge at a park gate, cannot be considered to occupy as tenants, but as servants merely, whose possession and occupation is strictly and properly that of their masters.

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In deciding, therefore, the present appeal, we have only to consider within which of the two classes the present case ranges itself.

It is found by the case, that the appellant is the surgeon of *Greenwich* Hospital; that the house which he occupies is in the infirmary; and that he occupies it as such surgeon. Now, the nature of the office of surgeon to the hospital is such, that a residence in some known and certain dwelling may reasonably be required for the due performance of the duties of his office. But it is further found, that he was placed in it when he was first appointed (nineteen years ago), and that he has continued to occupy it ever since; and that it is the house

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appropriated to the surgeon for the time being. And, lastly, it is found by the revising barrister, that, by the regulations established by the Lords Commissioners of the Admiralty, the officers of the hospital having apartments, are to inhabit those assigned to them, and that no exchanges or other appropriations are to be made without permission.

The revising barrister, upon this state of the evidence before him, appears to have come to the conclusion that the appellant occupies this house, not simply by *permission* of the government, and as part of the remuneration for his services as surgeon, but that he is *required* to occupy this house, with a view to the more efficient performance of the duties of his office, and consequently that there was no occupation by him in the legal relation of tenant to a landlord. And, upon the state of facts so brought before the revising barrister and set out upon the case, we cannot say he has come to a wrong conclusion in point of law.

One ground of argument taken by the counsel for the appellant was, that the appellant might, upon the facts stated in the case, be considered as *the owner*. But we think the facts therein stated shew that the Lords Commissioners of the Admiralty are, within the proper legal sense of the word, the owners of the house, too clearly to admit of an argument.

As we hold the decision to be right, by giving effect to the first objection against the appellant's right to vote, that is, by holding there is no occupation as tenant, it becomes unnecessary to consider the second objection, which relates to the mode of paying the occupier's rates. We therefore think the decision of the revising barrister must be affirmed.

Decision affirmed.

# CASES

ARGUED AND DETERMINED

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IN THE

## COURT OF COMMON PLEAS

UNDER THE STAT. 6 VICT. c. 18.

IN

MICHAELMAS TERM,

IN THE

EIGHTH YEAR OF THE REIGN OF VICTORIA.

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HINTON, Appellant, and The Town Clerk of *November 6.*  
WENLOCK, Respondent.

**KEATING** moved, on the part of the appellant, for a rule calling upon the respondent to shew cause why the statement of facts, which had been drawn up and signed by the revising barrister for the borough of *Wenlock*, should not be remitted to the barrister, in order that a certain fact might be inserted therein. The affidavit in support of the application stated, that the fact in question had been proved before the revising barrister, and that the appellant believed it to be material; but that the revising barrister had refused to insert it, upon the ground that it was, in his judgment, immaterial. *Keating* submitted that under the sixty-fifth

The Court has no power to remit to the revising barrister the case drawn up by him, because he has omitted a fact deemed material by one of the parties, but considered immaterial by the barrister; his finding upon the facts being conclusive.

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section of the stat. 6 *Vict. c.* 18. the Court had power to remit the statement of facts to the revising barrister, in order that the case might be more fully stated.

TINDAL C. J. By complying with this application we should put ourselves in the place of the revising barrister, and decide what facts are, and what facts are not, material; whereas the statute expressly requires us to give our judgment upon the statement of facts found by him. Looking at the forty-second and sixty-fifth sections of the act, it is quite clear that what we are asked to do is beyond our jurisdiction. The sixty-fifth section enacts that no appeal or notice of appeal under the act shall be received or allowed against any decision of any revising barrister upon any question of fact only; and it gives us the power of remitting the statement to the revising barrister in those cases only where, in the opinion of the Court, the statement of the matter of the appeal is not sufficient to enable them to give judgment in law. That does not appear to be the case in the present instance. Then, by the forty-second section, it is provided that the barrister shall state the facts *which in his judgment shall be material*. It is perfectly clear, therefore, that we cannot send the case back for the purpose which the appellant suggests.

MAULE J. We have no power of reviewing the judgment of the revising barrister upon the evidence given before him, but we are to give our judgment upon the facts which he finds, and the conclusions of law derivable from those facts.

Rule refused.

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WHITHORN, Appellant, and THOMAS, Respondent. November 18.

**T**HIS case came before the Court upon an appeal from the decision of *Henry Singer Keating, Esq.*, the revising barrister for the borough of *Tewkesbury*.

The appellant claimed to have his name inserted in the list of freemen for the borough. He was proved to be a freeman, and entitled to have his name inserted in the list, if he had resided within the borough, or within seven miles thereof, within the meaning of the statute 2 *W. 4. c. 45.*; and whether the claimant did so reside or not, was the question for the opinion of the Court.

The claimant was a wine merchant, residing and carrying on his business at *Gloucester* (which is more than seven miles from the borough of *Tewkesbury*), where he had for many years occupied a house (in which he carried on his business), and also bonding vaults for the bulk of his stock. He was a married man, and kept one domestic servant at his establishment in *Gloucester*. With the object of qualifying himself to vote for the borough of *Tewkesbury*, the claimant had, since the year 1841, paid to Mr. *Sproule*, a friend of his, and also agent for one of the sitting members for the borough, the sum of nine-pence a week for the use of a furnished bedroom in Mr. *Sproule's* house, situate within the borough, and also a closet about six feet by three, without a window, of which closet the claimant

The appellant, a freeman of the borough of *Tewkesbury*, resided with his wife and family, and carried on business as a wine-merchant, at *Gloucester*, more than seven miles from *Tewkesbury*. In order to obtain a vote for the borough, he paid ninepence a week for the use of a furnished bedroom and a dark closet in a friend's house at *Tewkesbury*. He had the key of the closet, and between *January* and *July* kept some wine samples in it. During that time he slept in the bedroom twelve times, and in the course of the year ending *July* 1844 between fifteen and twenty times; but he never took his meals in the

house, except as a guest. *Held*, that the appellant had not resided in *Tewkesbury* within the meaning of the stat. 2 *W. 4. c. 45. s. 32.*

The decisions of Election Committees of the House of Commons will not be regarded as authorities by this Court.



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kept the key, and between *January* and *July*, 1844, he kept some wine samples in it. During the same period he had slept in the bedroom twelve times, and during the year ending *July*, 1844, between fifteen and twenty times (*a*), on the occasion of his coming to *Tewkesbury* on business; but had never taken his meals at *Mr. Sproule's* except on some occasions when invited to dine as a friend. *Mr. Sproule* never let lodgings to any other person, and made the above arrangement with the claimant for the purpose of assisting him to qualify as a voter for the borough. The barrister decided that the claimant had not resided within the borough of *Tewkesbury*, within the meaning of the statute 2 *W* 4. c. 45., so as to entitle him to be placed upon the list of voters for the said borough.

An appeal from the decision of the barrister by *James Gorle* was consolidated with the preceding appeal.

*Byles* Serjt. for the appellant. The revising barrister has come to an erroneous conclusion upon the facts stated in the case. Three points arise for consideration; first, the object; secondly, the nature; and thirdly, the degree of the residence. Now, in the first place, supposing the nature and degree of the residence to be sufficient, it is no objection that the claimant took the room and closet for the express purpose of qualifying himself as a voter. *Rex v. Sargent (b)*; *Col. Chaytor's*

(*a*) As the case was originally drawn up, the statement was that the claimant had "slept in the bedroom *about* twelve times, and during the year ending *July*, 1844, *about* fifteen to twenty times." The Court considered that a more positive statement was necessary, and refused to permit alterations to be made in the case by consent of the parties; but the revising barrister being in Court, the case was handed to him, and altered *instantly* as above.

(*b*) 5 *T. R.* 466.

case. (a) [*Tindal* C. J. The case last cited was a decision by a committee of the House of Commons. You may use such decisions, for the reasoning which they contain, as part of your own argument; but they cannot be received as authorities by this Court.] There are a variety of other cases collected in *Elliott on Registration* (b), which shew that residence with the mere object of obtaining a vote thereby is no obstacle to the acquisition of the right. [*Tindal* C. J. I suppose that will be admitted on the other side. *Cockburn*, for the respondent, assented.] Then, secondly, as to the nature of the residence. The facts stated would amount to *inhabitancy* within the meaning of the statute 13 & 14 *Car. 2. c. 12. s. 1.* The result of the cases decided with reference to that statute is, that a man's residence is considered to be the place where he sleeps or lies. [*Maule* J. It is the place where he passes the night.] *Rex v. Castleton* (c) and *Rex v. Brighthelmston* (d) are authorities illustrating that position. [*Maule* J. The appellant claimed to vote as a *freeman*. Now, by the thirty-second section of the stat. 2 *W. 4. c. 45.*, a freeman cannot be registered unless he has resided for six calendar months next previous to the last day of *July* within the borough. Do you mean to contend that if the appellant had slept at *Tewkesbury* for twelve nights next previous to the last day of *July*, that would constitute a sufficient residence?] It is found by the case that the claimant slept in the bedroom during the year ending *July* 1844 between fifteen and twenty times. On twelve of those occasions the time is fixed to have been between *January* and *July*, and he must

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(a) 1 *Peck*. 389.

(b) Page 198. et seq., 2d ed.

(c) *Burr. S. C.* 569.(d) 5 *T. R.* 188.

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therefore have slept at *Tewkesbury* at least four times prior to the 31st day of *January*. That being so, it may be assumed that he had an *animus revertendi*. [*Maule J.* But the case does not find that he had an *animus revertendi*.] It states, however, that he had entered into an express contract with Mr. *Sproule* to pay him nine-pence a week for a furnished bedroom and closet, and that he had paid that sum since 1841. The claimant even kept the key of the closet. The Court will not presume fraud. So far, therefore, as the nature of it is concerned, the residence was sufficient. Thirdly, the degree of the residence was sufficient. It was not necessary that the appellant should sleep at *Tewkesbury* more than twelve nights in the half year, if he had an *animus revertendi*. No abuse can possibly arise from holding this to be a case of residence, because a freeman cannot now exercise the parliamentary franchise unless he has been in some way connected with the borough previously to the passing of the Reform Act. (a)

*Cockburn*, for the respondent. The last observation made on the other side is unfounded. It is a fact well known that very great abuses did formerly arise in elections for cities and boroughs by the introduction of the non-resident freemen, and one of the principal objects of the Reform Act was to remedy that mischief, by enacting that no freeman should be placed on the register unless he had resided within seven miles of the borough for the six calendar months next previously to the last day of *July* in each year. The real question here is,

(a) *Sed vide* 2 W. 4. c. 45. s. 32., which continues the rights of freemen admitted in respect of *servitude*.

whether there was a *bonâ fide*, or a colourable residence. It is an important fact in the case, that the claimant is a married man, having an establishment at *Gloucester*. *Ubi uxor, ibi domus*. His residence, therefore, was at *Gloucester*. Another material feature in the case is, that Mr. *Sproule*, in whose house the lodging was taken, was agent for one of the sitting members, and that he never let lodgings to any body but the claimant. In *Rex v. The Duke of Richmond* (a), it appeared that the defendant, who had been elected to the office of bailiff of the borough of *Seaford*, had only hired lodgings in the borough, and had resided there a very few nights in his way to and from the camps in that neighbourhood, previous to his election. Lord *Kenyon* C. J. observed, "This appears to have been a mere passage residence; and our proceedings would be ridiculous, if we were to decide that this residence was sufficient." In the present case also there was a mere passage residence, and it might just as well be said that a person who slept at an inn when business called him to *Tewkesbury* resided in that borough. Further, it appears that the claimant did nothing more than sleep at the lodging. Whenever he took his meals at the house of Mr. *Sproule*, it was as a guest. In *Rex v. North Curry* (b), *Bayley* J., in defining the word "*reside*" says, "I take it that that word, when there is nothing to shew that it is used in a more extensive sense, denotes the place where an individual eats, drinks, and sleeps, or where his family or his servants eat, drink, and sleep." The residence, therefore, in the present case, was not *bonâ fide*, but colourable.

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(a) 6 T. R. 560.

(b) 4 B. &amp; C. 959.

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*Byles* Serjt., in reply. The residence is not colourable, unless there be fraud, and the Court will act upon the rule by which the Court of Queen's Bench is guided in special cases, and will not see fraud, unless where it is directly stated to exist. *Rex v. The Duke of Richmond* (a) came before the Court on affidavits, and was not a final decision; the question being merely whether the facts stated ought or ought not to be submitted to the consideration of a jury. There is a wide distinction between *residence* and *domicile*. In *Dr. Story's Conflict of Laws*, s. 41., it is said, "By the term 'domicil,' in its ordinary acceptation, is meant the place where a person lives or has his home. In this sense the place where a person has his actual residence, inhabitancy, or commorancy, is sometimes called his domicil. In a strict and legal sense, that is properly the domicil of a person where he has his true, fixed, permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning (*animus revertendi*)."  
 (b) There is no doubt but that *Gloucester* was the appellant's domicile, but it does not follow as a consequence that *Tewkesbury* was not his residence. He might have two or more residences.

TINDAL C. J. The question in this case arises upon the thirty-second section of the stat. 2 W. 4. c. 45., which provides, that in order to entitle a person to be registered as a freeman of a city or borough, he must have "resided for six calendar months next previous to the last day of *July* in such year within such city

(a) 6 T. R. 560.

(b) See also sect. 43.

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or borough, or within seven statute miles from the place where the poll for such city or borough shall heretofore have been taken." The question, then, is, whether, on the facts which are stated in this case, we can see enough to say that the revising barrister has done wrong in holding that the appellant did not reside within the borough during the period required by the statute. It appears to me that the facts stated do not shew that the claimant had a *bonâ fide* residence within the borough of *Tewkesbury*. I do not mean to say that the object and motive of the claimant's residence, viz. that of obtaining a vote, can detract from his legal right to be placed on the register, if the facts shew that there was an actual residence; but at the same time the question will always be, whether there is a real, substantial, and *bonâ fide* case of residence established. It must be assumed that no facts more favourable for the appellant could be stated than those which are set out in the case. What, then, are the facts upon which we are to say that, in point of law, the appellant resided at *Tewkesbury*? That he had his domicile at *Gloucester* is beyond all doubt; and with respect to his residence at *Tewkesbury*, the facts stated are, that he paid *Sproule* nine-pence a week for the use of a furnished bedroom in his house, and also a closet, without a window, of which closet the claimant kept the key; that between *January* and *July* he had kept some wine samples in the closet; and that during the same period he had slept in the bedroom twelve times on the occasion of his coming to *Tewkesbury*. Now, first of all, the mere payment of nine-pence a week for this room &c. would not make a residence; nor would the occupation of the dark closet. Residence implies something more than that. It must

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mean an actual occupation by the party, either by his being there himself, or by the presence of his family or servants. There must be an *animus residendi*. Here the claimant has slept in the bedroom sixteen times during the year, and nothing at all appears in the case about the dates of the first four nights of the sixteen, except so far as it is left to inference that they fell within the first half of the year ending *July*, 1844. It is quite consistent with the case that they were the first four nights of that half year, and that the twelve nights on which the appellant slept at *Tewkesbury* during the last half-year were the last twelve nights of *July*. Now, is there to be no discretion exercised by a person adjudicating upon facts like these, so that we are to say that, on this dry state of facts, there was what the law calls a residence by the claimant? In my opinion the revising barrister has drawn the proper conclusion from the facts before him, and, therefore, I think that his decision must be affirmed.

COLTMAN J. I am of the same opinion. I think that, upon this statement of facts, we must consider that the appellant not only paid nine-pence a week to Mr. *Sproule*, but that he entered into a contract with him; that contract being, that he should sleep in this bedroom whenever he came to *Tewkesbury*. But that does not necessarily imply a residence in *Tewkesbury*. It is very true that a man may have a residence in two different places, but his domicile will be where his family resides, and if he only sleeps occasionally at the second place, the question will always arise, whether such second place was taken *animo residendi*. Again, although I agree that it is perfectly competent to a person

to take up his residence in a borough for the purpose of obtaining a vote, yet, when we find a man doing so, it makes one doubt whether it be done with an *animus residendi* within the meaning of the act of parliament. A residence with such an object would not in any degree invalidate the vote, but the avowed purpose throws some light upon the question whether he does, or does not, come to the borough with the intention of residing there. I think, therefore, that the decision of the revising barrister was right.

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MAULE J. I also think that the barrister was right in the conclusion which he drew from the facts stated. This is a very clear case, and probably, but for the importunity of the appellant, it would not have been reserved for our consideration. The revising barrister has stated his opinion that the claimant had not resided within the borough of *Tewkesbury*. I should feel myself bound by that decision, unless the facts stated for the opinion of the Court were manifestly inconsistent with the conclusion at which the revising barrister had arrived. But this is far from being a case of that description; because the facts stated, which are of course the most favourable to the appellant that could be stated for the opinion of the Court, lead my mind without any difficulty at all to the conclusion, that the appellant had not a residence within the borough of *Tewkesbury*. "Residence" is not a technical term; it is a word adopted by the framers of this act of parliament from the popular language of the country, and is, therefore, to be interpreted in its popular sense. The term "inhabitaney," on the other hand, has a technical meaning when used in acts of parliament, but that is not the



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case with the word "residence." No one but a lawyer could doubt, for a moment, that in the ordinary acceptation of the word, the appellant "resided" at *Gloucester*, and not at *Tewkesbury*. I do not say that it is not possible that a person who had slept twelve times at *Tewkesbury* within a year might have acquired a residence there, but there are facts in the present case which lead to the opposite conclusion, and especially the circumstance that the claimant's wife and family resided at *Gloucester*, and that he carried on his business in that city. It seems to me, therefore, that this decision ought to be affirmed, and I also think that it ought to be affirmed with costs.

ERLE J. I am of the same opinion. The question is, whether the barrister was legally bound, upon the facts stated, to find that the appellant had resided in *Tewkesbury* within the meaning of the Reform Act. I say, within the meaning of the Reform Act, because the word "resident" has been used in different senses in different statutes. I am not aware, however, that the facts here stated would amount to a residence within the meaning of any act of parliament. The object of the Reform Act was to prevent those who had a local interest in the borough from being overpowered by the influx of non-resident voters. Now, referring to the ordinary meaning of the word "residence," it certainly in some degree comprises the ideas attached to the word "home." But would any person say that the alleged residence of the appellant suggested any one of such ideas to him? It does not even appear that he had the exclusive right to the bedroom. It is stated, indeed, that he slept there twelve times in the course of six months; but so he

might have done at an inn. The fact of a man's sleeping a few nights at a place by no means constitutes it his residence, although I apprehend that, in order to constitute residence, it may not be necessary that a party should sleep in the place at all. He might himself be absent the whole six months, but if his family were there, and he had the intention of returning, he might still "reside" within the meaning of this statute. The only other fact to which I need advert is, that the claimant had the key of a small closet, in which he kept some wine samples; but taking this in conjunction with the other facts of the case, I think that such an occupation does not make a residence.

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*Cockburn* applied for the costs of the appeal.

TINDAL C. J. Yes; this being a clear case, costs must be granted.

Decision affirmed, with costs.

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November 18. GADSBY, Appellant, and WARBURTON, Respondent.

A notice of objection was signed "*John Gadsby, of Poplar Grove, Didsbury, on the register of voters for the township of Manchester.*" In the register his place of abode was also stated to be "*Poplar Grove, Didsbury.*" Held, first, a sufficient compliance with the form prescribed by stat. 6 Vict. c. 18. s. 7., without stating the name of the parish to which the township of *Manchester* belonged.

Secondly, that the description in the notice of the objector's place of abode did not require the addition of any county or large town in or near which *Didsbury* was situate, *Didsbury* being itself a township.

Thirdly, that the objector was right in describing his place of abode as it appeared on the register of voters.

Semble, per *Maule J.*, that it is not necessary that an objector should also state the place of abode to which he may have removed since the register of voters was made up.

Semble, per *Erle J.*, that a notice of objection would be bad, if it appeared that an improper description of the objector's place of abode had been purposely inserted in the register.

In arguing an appeal, only one counsel on each side can be heard.

THIS was an appeal from the decision of *Richard Matthews, Esq.*, one of the revising barristers for the southern division of the county of *Lancaster*.

The respondent's name appeared on the list of voters for the southern division of *Lancashire*, and the appellant had sent to him, through the post, a notice of objection in the following form :

"To Mr. *Samuel Warburton*, of *Newton*, near *Hyde*, *Cheshire*.

"Take notice, that I object to your name being retained in the *Harpurhey* list of voters for the southern division of the county of *Lancaster*. Dated &c.

"*John Gadsby*, of *Poplar Grove, Didsbury*, on the register of voters for the township of *Manchester*."

The appellant's name was on the register of voters for the township of *Manchester*, and his place of abode was there stated to be "*Poplar Grove, Didsbury.*" The revising barrister held the notice of objection to be insufficient, considering that something ought to have been added to the description of the objector's place of abode, as "*Lancashire*" or "*near Manchester*" (*Didsbury* being a few miles only from *Manchester*,

and a township within the polling district of *Manchester*), or the like, as the case might be; and he retained the respondent's name on the list without calling upon him to prove his qualification.

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*Cockburn* (with whom was *Kinglake* Serjt.), for the appellant. The decision of the revising barrister was wrong, and the name of the respondent, therefore, ought to be expunged from the list of voters. Two questions arise for the consideration of the court; first, was the description of the objector's place of abode, as stated in the notice of objection, sufficient? and, secondly, was it rendered so in consequence of the description being the same as that which appeared in the register? It is submitted, in the first place, that the description given in the notice of objection was sufficient in itself. The object of the stat. 6 *Vict. c. 18.* was to identify the party objecting, and to enable the individual against whom the objection is directed to ascertain who the objector is. The form given in Schedule (A) No. 5. of that act has been literally followed, with one exception, viz. the objector, instead of saying that he is on the register of voters for a *parish*, states that he is on the register of voters for the *township* of *Manchester*. But the term "township" is as well known in law as the description of a district, as the term "parish," and the respondent might easily have discovered that *Didsbury* was within the polling district of *Manchester*, by a reference to the list of voters for that township. Secondly, the notice of objection, even if insufficient in itself, was made good by the objector's place of abode being described in it exactly as it was described in the register of voters. The intention of the stat. 6 *Vict. c. 18. s. 7.* was to

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point out the objector, so that the party objected to might ascertain whether he was a person entitled to make an objection, and therefore the objector's place of abode *must* be described, in the notice of objection, as it appears on the list of voters.

*Kinglake* Serjt. applied to be heard on the same side.

TINDAL C. J. By the sixtieth section of the stat. 6 *Vict. c. 18.* these appeals are to be heard and determined according to the ordinary practice of the Court with respect to special cases. We can, therefore, hear only one counsel on each side.

*Cardwell*, for the respondent. The question which really arises for the consideration of the court has not been accurately stated on the other side. The barrister has found, as a fact, that the notice is insufficient, and the point to be determined is, whether there is any thing to show that he was bound in law to consider it sufficient. The respondent resided in the county of *Chester*, and for any thing that appears there may be two or three places known by the name of *Didsbury*. The respondent, therefore, was entitled to more precise information relative to the objector's place of abode, and he had, at any rate, a right to know whether *the Didsbury* referred to by the appellant was in *Lancashire* or not. [*Maule* J. There might be a *Didsbury* in the United States.] There might very well be a *Didsbury* in *Cornwall* or in *Sussex*. The notice of objection, therefore, was properly found by the revising barrister to be in itself insufficient. As to the second point which has been raised, the act of parliament requires a

statement of the actual place of abode of the party objecting, and not his place of abode as it appears on the register. He may have put upon the register an erroneous description of his place of abode, or he may have changed his residence since the register was made out.

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*Cockburn* replied.

TINDAL C. J. I think the test to which the sufficiency of this notice of objection is to be brought is to lay it by the side of the form which is given in Schedule (A) No. 5. of the stat. 6 *Vict. c.* 18., and see whether it does, or does not, agree with the form there given. Now, when we look at this notice, it corresponds exactly with the form in the schedule, except in the substitution of the word "township" for "parish;" but that is not a variance from the form given by the act, because the seventh section provides that the notice shall be in that form, *or to the like effect*; and if the register is made out for a township, it is necessary for the party objecting to say that he is on the register of voters for that township. It is a strict compliance with the form, therefore, for the appellant to say that he is on the register of voters for the township of *Manchester*. I think also that the form has been sufficiently complied with by the description given of the place of abode, and that the notice properly inserted the same description of the place of abode as that which appeared on the register. A place of abode is not necessarily a parish; *Com. Dig.*, tit. *Abatement*. (F. 25.) But the objection to the notice is, that there may be two or more places called *Didsbury*, and that in order to identify the

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appellant's place of abode, the words "*Lancashire*" or "near *Manchester*" should have been added. I think, however, it should have been found as a fact in the case that there was any other *Didsbury* than that "near *Manchester*," and then ground would have been laid for shewing that practical inconvenience might have followed from the omission of those words. The object of the act seems to have been that the name and place of abode of the party objecting should be stated in the notice as it appears in the register of voters for the county, because that is the place to which the party objected to would look for the necessary information. That has been done in the present case, and therefore I think that the notice of objection is good, and that the decision of the revising barrister must be reversed.

COLTMAN J. It is quite clear that the respondent had, in the present case, abundant means of identifying the party objecting. The christian name and place of residence described in the notice of objection are the same as those which appear opposite the name of *Gadsby*, in the register of voters for the township of *Manchester*, and there was hardly a possibility of inconvenience to the party objected to. The notice is, therefore, sufficient.

MAULE J. I also think that this decision must be reversed. It appears to me, that although the barrister has found that the notice was not sufficient, it is yet a matter of law whether the facts which he has stated for the opinion of this Court warrant the conclusion at which he has arrived; and I agree with the rest of the Court in thinking that his decision was wrong. The statute

requires the notice of objection to be given in the form No. 5. Schedule (A). The place of abode, which is placed within brackets, seems to me to mean the place of abode as stated in the register. The main point for the party receiving a notice of objection, is to ascertain whether the party objecting has a right to object, and by looking at the list of voters it can soon be determined whether the party whose name appears on the register is really the same as the individual sending the notice of objection. I cannot, therefore, doubt that, in the notice of objection, it is necessary that the place of abode of the objector should be that which appears in the list of voters. It is not necessary to decide whether, in the event of a change of residence since the register was made up, the objector should *also* insert his last place of abode in the notice of objection, but I incline to think it would not be necessary. The language used in the form, following the signature of the party objecting, is "of" such a place; and it goes on to say, "on the register of voters for" &c. Now, the particle "of" is more fitly introductory of the place of abode as descriptive of the *person* who writes, than of the *place* from which a letter is sent. If a person intended to have a notice sent to him, or to have a letter answered, he would date his letter "*Palace Yard*," and not append to his signature "*of Palace Yard*." In the form, No. 4. Schedule (A.), where the notice of objection is to be given to the overseers, the word "of" does not precede the place of abode of the party objecting. Upon these grounds, I think that the revising barrister was wrong, and consequently that the name of the respondent must be struck out of the list of voters.

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ERLE J. It appears to me also, that the decision of the revising barrister was wrong. The first question is, whether the description of a party as "of" a place which is found in the case to be a township, is sufficient. I am not aware of any necessity in law for adding to such a description the name of the county in which the township is situate, or that of any large neighbouring town. Upon the second point, it seems to me that the place of abode intended by the form given in Schedule (A.) No. 5, is the place of abode which appears in the list of voters for the county. The whole object of the form is to identify the objector, and if he had purposely put on the register an improper description of his place of abode, I should be inclined to think that the notice of objection would be bad.

Decision reversed.

November 18. GADSBY, Appellant, and BARROW, Respondent.

To entitle an occupying tenant to vote for knights of the shire, under stat. 2 W. 4. c. 45. s. 20., he must be liable to a single yearly rent of not less than 50*l.*, payable in respect of lands held under one landlord.

AT a Court held before *Richard Matthews*, Esquire, one of the barristers appointed to revise the lists of voters for the southern division of the county of *Lancaster*, the respondent's name appeared on the list of persons claiming to be entitled to vote in the election of any knight of the shire for that division of the county. The respondent was objected to by the appellant. The qualification in respect of which the respondent claimed to be entitled to vote was described as an "occupation of land and buildings at a rental of 50*l.* and upwards." It appeared that the respondent occupied the land and buildings in question, for which

he paid 55*l.* a year, under two different landlords, to one of whom he paid a rental of 35*l.* per annum, and to the other a rental of 20*l.* per annum. It was contended, on behalf of the appellant, that the occupation of the respondent not amounting to a yearly rental of 50*l.* to any one landlord, he could not unite the two occupations and rentals, so as to qualify him to vote as an occupying tenant of lands or tenements for which he was *bonâ fide* liable to a yearly rent of not less than 50*l.* The revising barrister was of opinion that the respondent had made out a sufficient qualification, and accordingly retained his name on the list of voters.

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*Cockburn* (*Kinglake* Serjt. with him), for the appellant. The question in this case arises upon the construction of the twentieth section of the stat. 2 *W. 4. c. 45.* That section enacts, "That every male person of full age, and not subject to any legal incapacity, who shall be entitled, either as lessee or assignee, to any lands or tenements, whether of freehold or of any other tenure whatever, for the unexpired residue, whatever it may be, of any term originally created for a period of not less than sixty years, (whether determinable on a life or lives, or not) of the clear yearly value of not less than 10*l.* over and above all rents and charges payable out of, or in respect of the same, *or* for the unexpired residue, whatever it may be, of any term originally created for a period of not less than twenty years, (whether determinable on a life or lives, or not,) of the clear yearly value of not less than 50*l.* over and above all rents and charges payable out of, or in respect of the same, *or* who shall occupy as tenant any lands or tenements for which he shall be *bonâ fide* liable to a

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yearly rent of not less than 50%. shall be entitled to vote in the election of a knight or knights of the shire to serve in any future parliament for the county, or for the riding, parts, or division of the county, in which such lands or tenements shall be respectively situate." The Court will have to determine whether the words in the third branch of this section extend to tenants occupying lands at a yearly rent of not less than 50%, but not occupying them under the same landlord. It is submitted that they do not. If the amount for which the tenant is liable is made up of different rents, he does not occupy at a yearly rent of not less than 50%. In the twenty-seventh section of the Reform Act, it is required that land which may be united with a building in order to make up the necessary qualification under that section shall be held by the tenant "under the same landlord," which shews the importance attached in this act of parliament to such a holding. In the same section, it is to be observed, the legislature speaks of "any house" &c. in the singular number, and therefore, under the corresponding section of the *Irish* Reform Act (a), it has been held that a party claiming to register cannot join a house and another building together to make up the qualification. In *Sweetman's Case* (b) the notice of registry was out of a "counting-house and stores." The counting-house alone was not worth 10% yearly, but the counting-house and stores together were worth much more than that amount. It was held by the majority of the judges, that the claimant was not entitled to register as a householder, as he could not unite the stores with the counting-house. It is submitted,

(a) 2 &amp; 3 W. 4. c. 88. s. 7.

(b) *Alcock's R. C.* 27.

therefore, that when the legislature conferred, for the first time, upon the classes of persons pointed out by the twentieth and twenty-seventh sections of the Reform Act, the county and borough franchises, and in doing so, used the words *a yearly rent*, not *rents*, and *house*, not *houses*, it must have been intended that two separate holdings should not be joined together in order to make up the requisite value.

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*Cardwell, contra.* Both the words and the spirit of the act are in conformity with the decision of the revising barrister. The meaning of the 20th section of the Reform Act, looking merely at the words of the clause, is, that to entitle an occupying tenant to a vote for the county, he must hold lands for which he pays 50*l.* as rent. But, upon an examination of the language used in the 27th section, it appears much more clearly that such must have been the intention of the act of parliament. In that section are the words "under the same landlord," and the omission of those words in the 20th section sufficiently indicate the distinction which was intended to be made between the conditions on which the county and the borough franchises were to be acquired. Analogous cases have been decided under the Poor Law Acts. In *Rex v. Tadcaster (a)*, the pauper had taken and paid rent for two buildings, neither of which was rented at 10*l.*, though the amount of rent paid for both exceeded that sum. The buildings were held by the pauper as tenant to two different landlords, and the Court of Queen's Bench decided that he thereby gained a settlement by renting

(a) 4 B. & Ad. 703.

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a tenement under the stat. 6 G. 4. c. 57., which, like the statute now under consideration, speaks of *rent* in the singular number. *Rex v. North Collingham* (a), which was decided upon the statute of 59 G. 3. c. 50., had previously determined the same point. The statute 2 W. 4. c. 45., being an enfranchising act, ought to receive a liberal construction, and therefore the respondent, paying upwards of 50*l.* a year as rent, is entitled to a vote for the county.

*Cockburn*, in reply, referred to *Rex v. Wootton* (b), and *Rex v. Tonbridge*. (c)

TINDAL C.J. The question to be decided in this case arises upon the proper construction to be given to the latter part of the 20th section of the stat. 2 W. 4. c. 45. It is to be observed, that this section gives, for the first time, a new right of voting in three different instances, for it is well known that before the Reform Act passed, no person with less than a freehold interest was qualified to vote at elections for a knight of the shire. The right now under consideration is given by this section, amongst others, to every person "who shall occupy, as tenant, any lands or tenements for which he shall be *bonâ fide* liable to a yearly rent of not less than 50*l.*" Looking at these words, I think the sense of them is, not only in grammatical, but in legal construction, that the party, in order to obtain a right to vote, shall be liable to a *single rent* of not less than 50*l.* a year. If the statute had intended that this amount should be made up, if necessary, of divers rents, it would have been just as easy to have said, "a

(a) 1 B. & C. 578.

(b) 1 A. & E. 236.

(c) 6 B. & C. 88.

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yearly rent or *rents* of not less than 50*l*." In furtherance of this being the true construction of the words of the act, see how the same section confers the right of voting in the two other cases. In the first place, the right is given to any person entitled as lessee or assignee to the unexpired residue of any term originally created for 60 years, if of the value of 10*l*. In that case there could be no doubt that the value might be made up of several *houses* of smaller value than 10*l*., if comprised in one lease (*a*), because *term* is the expression used; but it is equally clear that the act never intended to confer the franchise in respect of two or more *terms*, each of less value than 10*l*., though their aggregate value might reach that amount. So in the next instance; where a person is possessed of the unexpired residue of a term originally created for not less than 20 years, if of the value of 50*l*., he is entitled to a vote. There, again, you have the description of a person who is to have a right to vote in respect of a single term. Then, when we come to the case of a party occupying lands as a tenant, there seems to be no reason why the legislature should have contemplated any other tenure than that of a tenant holding under *one* landlord. Taking, therefore, the words of the clause by themselves, I think they must mean to confer the right of voting in respect of a liability to a single rent of not less than 50*l*. And when we come to look at the words of the 27th section of the statute, it seems to me that they rather support the view which I take of the 20th section. In the 27th clause of the act, no mention is made of *rent*. The words of that section give the right

(a) See *Webb v. The Overseers of Birmingham*, *antè*, p. 18.

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of voting for cities and boroughs to any person who shall occupy, as owner or tenant, "any house, warehouse, counting-house, shop, or other building, being, either separately, or jointly with any land within such city, borough, or place, occupied therewith by him as owner, or occupied therewith by him as tenant *under the same landlord*, of the clear yearly value of not less than 10*l*." In that section it might be necessary to specify, that when land was held with any building, and the value of each was added up to make the requisite yearly value of 10*l*., they should be held by the occupier, not being the owner, as tenant under the same landlord; otherwise a person would have been allowed to add together the *values* of premises held by him of different landlords. But the words in the 20th section are "*a yearly rent*," and therefore it was unnecessary to say that the party must occupy the lands, in respect of which he might be liable to that rent, as tenant under the same landlord. It is to be observed, too, that the stat. 6 *Vict. c. 18. s. 73.*, recites the 20th section of the Reform Act, and makes some new enactments, extending the rights of 50*l*. occupiers, and I think it may be reasonably inferred that if it had been the intention of the legislature to alter the former act in respect of the tenant's liability to one yearly rent, that alteration would have been made when the statute of *Victoria* passed. That statute does provide for cases of successive occupation, and of joint occupation by several tenants, still observing, however, the singular number, by speaking of "*a yearly rent*." Upon these grounds I am of opinion that the respondent was not entitled to vote, and, therefore, that the decision of the revising barrister was wrong.

COLTMAN J. The 20th section of the stat. 2 W. 4. c. 45., speaks of "a yearly rent of not less than 50*l*." Now, if a party occupies two sets of premises under two landlords, one set of premises at a rent of 40*l*., and the other at a rent of 10*l*., he cannot be said to occupy any premises at "*a yearly rent*" of 50*l*. We must follow the clear meaning of the words used, unless there be something in the act which shews that the legislature had a different intention to that which they have expressed, and I do not see any thing either in the section itself, or in the rest of the act, which leads me to suppose that an occupation under two different landlords was intended. It may well be that the legislature did not think it desirable that a party should be subjected to the torture of deciding on the conflicting claims of two different landlords, when it might be doubtful to which of them he owed his allegiance. I am of opinion, therefore, that the respondent is not entitled to have his name retained in the list of voters.

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MAULE J. I also think that the party is not entitled to vote, he not being a person occupying lands for which he was liable to a yearly rent of not less than 50*l*., within the words of the 20th section of the Reform Act. The respondent occupied two portions of land, for one of which he was liable to a rent of 35*l*. a year, and for the other to another yearly rent of 20*l*. There was, therefore, no portion of land occupied by him for which he was liable to a rent of 50*l*. But, if a party takes land at 50*l*. a year, he is liable to pay that rent for every inch of the ground so taken. It appears to me that the claim of the respondent clearly falls without the words of the clause; and as the words are very



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precise, we are bound to abide by them. It is to be observed that this is the only clause in this act of parliament, or in any act of parliament that I know of, which confers a franchise in respect of a *liability* to pay rent. It does not confer the right to vote in respect of the *value* of the lands occupied, nor in respect of the *payment* of the rent. When the foundation of the right is of so peculiar a nature, one can hardly deal with it in the same manner as one would do in construing other rights which are conferred in the ordinary way. When the value of the land is the criterion of the right to vote, the presumption would be, unless the words of the act required a different construction, that the values of different lands might be added together, but when the vote depends on a liability to pay a rent of 50*l.*, there is nothing to shew that the adding together of different smaller rents is within the meaning of the legislature. I therefore think that the respondent's vote was improperly allowed by the revising barrister.

ERLE J. It appears to me that it was intended by the twentieth section of stat. 2 *W.* 4. c. 45. to give a qualification to vote for counties in respect of leasehold property in three instances; first, to termors for sixty years, when the yearly value of the premises is 10*l.*; secondly, to termors for twenty years, when the premises are of the yearly value of 50*l.*; and, thirdly, to tenants from year to year, at a yearly rent of 50*l.* It seems to me that, under the terms of this section, no person could qualify as an occupying tenant, unless he held lands under one tenancy at one rent. This view of the case is fortified by a reference to the twenty-seventh section, where the word "rent" is not used, but where

the words "under the same landlord" shew that it was intended to confer the right of voting in respect of one tenancy. With respect to the poor law statutes, their whole tenor seems to shew that the legislature intended that a party, in order to acquire a settlement by occupying a tenement, should have sufficient credit for the taking of a tenement of the value of 10l.; and, therefore, whether he occupied under one, or two landlords, is not material. But the analogy from the decisions upon the construction of these statutes is not very cogent in the present case.

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Decision reversed.

CUMING, Appellant, and Toms, Respondent.

November 18.

**T**HIS was a consolidated appeal from the decision of *James Lancaster Lucena*, Esq., the revising barrister for the borough of *Totnes*, who stated the following case for the opinion of the Court.

*Francis Brooking Cuming*, of *Fore Street*, in the list of voters for the parish of *Totnes*, in the borough of *Totnes*, objected to the name of *Francis Coaker* being retained on the list of persons entitled to vote in the election of members for the said borough. A paper-writing (a) purporting to be a duplicate of the notice of objection, stamped at the post-office on the 21st day of *August* last, was produced before the revising barrister. The said paper had been signed by the objector, and compared by him with the original notice, and both

The production by the objector himself of a stamped duplicate notice of objection, is sufficient, under the stat. 6 Vict. c. 18. s. 100., though the notice was posted by an agent.

(a) This was the duplicate itself, which was annexed to the case, and bore the post-office stamp, "*Totnes*, 21st *August* 1844."

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were addressed to the voter at his place of abode as described in the said list, and both were delivered by the objector to *James Bosson Taylor*, his clerk, to take to the post-office, on the said 21st day of *August*. The said *James Bosson Taylor* immediately left the office of the objector, taking with him the said paper and notice, and returned within the space of a quarter of an hour with the said paper stamped with the post-office stamp, "21st *August* 1844." The said notice would in the ordinary course of the post have been delivered at the voter's place of abode, as described in the said list, on or before the 25th day of *August* last. *James Bosson Taylor*, being confined by illness, was unable to attend before the barrister. It was objected on the part of *Francis Coaker*, that as such alleged duplicate was produced by the objector himself, and not by the said *James Bosson Taylor*, as the party who posted the notice, the service of the notice was not duly proved, and the revising barrister being of that opinion, retained the name of the voter on the list. The voter did not prove his qualification. The question for the opinion of the Court was, whether under the circumstances mentioned in the above statement, the name of the said *Francis Coaker* was rightly retained on the said list of voters for the borough of *Totnes*. If the Court should be of that opinion, the register was to stand without amendment; if of a contrary opinion, then the register was to be amended by expunging therefrom the names of the said *Francis Coaker*, and the other parties who were joined with him in the appeal.

*Cockburn* for the appellant. The question in this case turns upon the stat. 6 *Vict.* c. 18. s. 100. (a), and is

(a) See the section set out at length, *antè*, pp. 93, 94.

simply this, viz. whether the identical party who delivers the notices of objection to the postmaster, must attend before the revising barrister to prove the fact of such delivery. It is submitted that it was the obvious intention of the statute that the production of the duplicate by any person should be sufficient. It can make no difference whether it be produced by one person or another. [*Tindal* C. J. Credit is given to the stamp.] It would lead to great inconvenience and expense if the production of the stamped instrument would not suffice. The statute must receive a reasonable construction, and, therefore, the Court will not require that the duplicate shall be produced by the very party who posted the notice of objection.

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*Kinglake* Serjt. for the respondent. It is important that the party who has posted the notice should himself produce the duplicate before the revising barrister, because the place and time at which the notice was posted may be material, in order to shew that the notice would, in the ordinary course of the post, have reached the party for whom it was intended, at a proper time. [*Tindal* C. J. The post-office stamp proves that.] The object of this clause was to relieve the party objecting from a portion of the difficulty which was formerly thrown on objectors in proving the service of notice of objection. Before the statute passed, the objector must have delivered the notice of objection himself, or have sent an agent for that purpose, and he must now comply strictly with the new mode of proof required by the statute. [*Tindal* C. J. Do you mean to contend that, in the present instance, the clerk ought not to have taken the notice of objection to the post-office?] It is

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submitted that the notice must be delivered at the post-office by the objector in person. [*Tindal* C. J. Then a man labouring under a fit of the gout could not make an objection.] He would not be able to avail himself of this mode of proving the service of the notice, but he might have the notice served by an agent in the ordinary way. Contrasting the language used in other sections of the act with the terms used in the 100th section, there seems to be no room for doubt that, when notices of objection are sent through the post, they must be delivered to the postmaster by the objector himself. In section 17. the words are, "the person so objecting shall give *or causeto be left* at the place of abode of the person objected to." So, in section 7., the words are, "give *or cause to be given*," and "leave *or cause to be left*." In the third section, it is said that the clerk of the peace shall "*cause to be delivered*" his precept to the overseers; and, by section 10., the town clerk is to "*cause to be delivered*" his precept. But the 100th section of the act requires that "whenever any person shall be desirous of sending such notice of objection by the post, *he* shall deliver the same" to the postmaster; and further on, it is provided, that "the production, *by the party who posted such notice*, of such stamped duplicate, shall be evidence of the notice having been given to the person at the place mentioned in such duplicate, on the day on which such notice would, in the ordinary course of post, have been delivered to such place." It is contended, therefore, that the delivery and production of the notice must be by the hand of the objector himself.

*Cockburn*, in reply, was stopped by the Court.

TINDAL C. J. I can see no reason why the general maxim of law, *qui facit per alium, facit per se*, should not apply in this particular instance. If it could be shewn that any mischief would arise from holding that the objector may do by the hands of an agent what it is clear he is at liberty to do himself, the matter might be different; but, in point of fact, when the duplicate is produced, the whole faith and credit which is attached to it is given to the stamp of the postmaster. The stamp remains the same, whether the duplicate be produced by the party who signed the notice of objection, or by the clerk who posted it. It serves only to create a needless difficulty to say that the party objecting shall not employ his clerk to go to the post-office to deliver the notices of objection, as he would any other letters. It seems to me to be quite consistent with the reason of the case, and with the words of the clause, to hold that this was a good production of the stamped duplicate.

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COLTMAN J. We had, on a former occasion (a), a good deal of discussion on a point arising upon this section, whether a delivery of a notice of objection to a postmaster's managing clerk was sufficient. The question was undoubtedly open to much argument, but the Court thought, after taking time for consideration, that the delivery was sufficient in that case. That decision seems to me to be an authority in the construction of the statute in the present instance. I see no reason why the objector himself should be the person who actually posts the notice of objection, and I think, therefore, that we are authorised to consider this as a

(a) In *Allan v. Waterhouse*, ante, p. 92.

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sufficient production of the duplicate within the meaning of the statute.

MAULE J. It would require very strong words in the act, or proof that a manifest inconvenience would be thereby avoided, to induce me to hold that the common rule, that personal service shall not be required from the party on whose behalf the service is made, ought to be departed from in the present instance. There is nothing, as it seems to me, in the words of this act of parliament, and nothing is suggested in the shape of inconvenience, which requires us to put such a construction upon the statute. I think, therefore, that delivery of the notice of objection was sufficiently proved by the production of the stamped duplicate before the revising barrister; and that it would be defeating a very valuable provision in the act of parliament if we were to hold the contrary.

ERLE J. I am of the same opinion. The statute says that the party objecting "shall deliver" the notice of objection to the postmaster; but I think these words, being only directory, would be complied with if the notice were delivered by the hand of an agent. The rule, *qui facit per alium, facit per se*, applies here, and, therefore, the objector, who produced the stamped duplicate before the barrister, must be taken to have been the person who posted the notice of objection, and his production of the duplicate made it evidence of the delivery of the notice. Although in other sections of the act the words "give or cause to be given," and "leave or cause to be left" are found, they seem to have been introduced only for greater caution.

Decision reversed.

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NETTLETON, Appellant, and BURRELL, Respondent. November 19.

**A**N application had been made within the first four days of the term, for leave to enter an appeal in this case from the decision of *Edward Erastus Deacon*, Esq., the revising barrister for the borough of *Wakefield*, who had died without signing a statement of facts agreed upon and signed by the respective attornies for the appellant and the respondent. The affidavit upon which the application was founded was made by the *London* agent to the appellant's attorney, and the Court, expressing a doubt whether they had jurisdiction to interfere, finally permitted the appeal to be entered *de bene esse*, in order that time might be allowed for preparing fresh affidavits by parties who had a personal knowledge of the facts.

The Court refused to allow an appeal against the decision of a revising barrister to be entered, where the barrister, after consenting to grant a case, and expressing his approval of the points raised in a statement of facts, returned the statement to the parties to draw up in another form, and died without signing the case as altered in accordance therewith.

*Kinglake* Serjt. now renewed his application. It appeared, upon the affidavits, that at the last revision of the lists of voters for the borough of *Wakefield*, the appellant had objected to the votes of the respondent and others; and that the barrister had disallowed the objections, and retained the names of the parties upon the list. The appellant, thereupon, gave the barrister, in open court, a written notice of his intention to appeal against the decision; and the barrister consented to grant a case for the opinion of this Court, and desired the parties on both sides to prepare a statement of facts, promising that he would afterwards examine and settle



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such statement. A statement of facts was accordingly, the same day, agreed upon, drawn up, and signed by the attornies for the appellant and respondent respectively; and it was handed to the barrister, who expressed his approval of the facts stated and the points of law raised, but returned it to the parties, with a recommendation to draw up the case in accordance with another form, which he lent to them for that purpose. The parties, accordingly, remodelled the case in the form suggested, and sent it back to the barrister, with the declaration required by the statute, duly subscribed by the appellant. Shortly afterwards the revising barrister died suddenly, and the case was found, after his death, among his papers, unsigned by him.

The learned serjeant submitted, that the *signature* of the barrister was not necessary, under the forty-second section of the stat. 6 *Vict. c. 18.*, in order to give the Court jurisdiction. The provisions of that section were merely directory. His *approbation* of the case was all that was required, and that had been given. [*Tindal C. J.* The affidavits do not state that the revising barrister expressed his approbation of the case *as altered*. One does not see why he should not have signed it immediately, if he approved of it. He might have carried it away with him to consider about it. *Maule J.* The presumption which arises from the absence of the revising barrister's signature is, either that he did not see the altered case, or that, having seen it, he did not approve of it. *Tindal C. J.* It seems to me that the matter was merely *in fieri*, and that the case was not completely settled by the revising barrister. We have, therefore, no jurisdiction.]

*Channell* Serjt., who was on the other side, was not called upon.

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*Per curiam.*

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Application refused.

DAVIS, Appellant, and WADDINGTON, Respondent. November 21.

THIS was a consolidated appeal from the decision of *John Mellor*, Esq., the revising barrister for the northern division of *Northamptonshire*, by whom the following case was stated for the opinion of the Court.

*Thomas Waddington* duly objected to the name of *Thomas Davis*, which appeared on the list of claimants for the parish of *Rothwell*, as follows : —

By letters patent, dated 38 *Elix.*, the governors of *Jesus Hospital, Rothwell*, were incorporated, and empowered to appoint and amove a principal and twenty-four poor men, so often as it should seem to be convenient to them, or the greater number of them. The letters patent also empowered the governors to make bye-laws whereby it was ordained, that for certain offences therein described, or other lawful and reasonable cause, the principal and inmates might be removed. No principal or inmate had been expelled the hospital.

Davis, Thomas.	Rothwell.	Freehold houses, lands, and garden, as <i>Principal</i> of <i>Jesus Hospital</i> .	Emoluments arising out of freehold houses and lands belonging to <i>Jesus Hospital, Rothwell</i> , near the church, occupied by himself, <i>Robert Stafford</i> , and others.
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He also objected to the name of *Robert Burbage*, which appeared on the same list as follows : —

Burbage, Robert.	Rothwell.	Freehold appointment as <i>Inmate</i> of <i>Jesus Hospital</i> .	Emoluments arising out of freehold houses and lands belonging to <i>Jesus Hospital, Rothwell</i> , in the occupation of himself, <i>Robert Stafford</i> , and others.
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The governors received the rents of the hospital estates, and paid them to the principal and poor men. The principal was provided with a house and garden, and each inmate with a room and piece of ground within the hospital, of a value exceeding 40s. per annum. Held, that the appointments of the principal and inmates under the charter did not confer upon them any freehold interest entitling them to a vote for the county, but merely an estate during the pleasure of the governors.

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It appeared that one *Owen Ragsdale*, deceased, left his estate for founding an hospital at *Rothwell* to five trustees, who were incorporated by the name of “The Governors of *Jesus Hospital, Rothwell*,” by letters patent, bearing date the thirty-eighth year of *Elizabeth*. The governors receive the rents of the estate, and pay to the principal and inmates of the hospital as follows: — to the principal 35*l.* per annum, and to each inmate 6*s.* per week. There are now twenty-six inmates, two having been added to the original number of twenty-four by recommendation of the charity commissioners. In accordance with the bye-laws made by the original governors, and now in force, the principal is elected by the majority of the governors, and the inmates by such governors in rotation. The appointments are in writing, and generally in the following form: —

“To —, principal of *Jesus Hospital*, in *Rothwell*, in the county of *Northampton*.

“Whereas —, a poor man late of your said hospital is dead, you, the said principal, are hereby to admit —, in the hundred of —, in the said county, into your said hospital, in the room and place of the said —, deceased; it being my turn, as one of the governors thereof, to appoint a poor man to be placed in the said hospital upon a vacancy; and for so doing this shall be to you a sufficient warrant.

“Given under my hand and seal this — day of — 18 —.”

*No instance is recorded of any principal or inmate having been expelled the hospital.* The principal has a house and garden within the hospital, and each inmate, on his appointment, is provided with a room and piece

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of ground for his own separate use, of the value of more than 40s. per annum, which is generally the room and garden of the person whose death gave occasion for his appointment; but the principal exercises a discretion as to the room which the new-comer is to use. There are also four halls in common to the inmates. The charter of incorporation sets forth the power of the governors then being, and their successors, and a majority of them, "*to elect, nominate, and assign, appoint, license, deprive, expel, and amove* the said principal and twenty-four poor and infirm men in the said hospital called *Jesus Hospital* in *Rothwell*, in the county of *Northampton*, from time to time to be placed there for the time being, or either of them, so often as it shall seem to be convenient to them or the greater number of them," (*toties quoties sibi, aut eorum numero majori, conveniens fore videbitur.*) The said charter further declares that the "*governors shall be able to make fit and wholesome statutes and ordinances in writing, concerning, and touching the nomination, election, order, government, punishment, expulsion, amotion, and direction* of the said principal, and twenty-four poor and infirm men, and every of them; and concerning and touching the stipends and salaries of the same principal, and twenty-four poor and infirm men, and every of them; and concerning and touching the order of government, demising, leasing, disposition, recovery, and defence and preservation of the manors and messuages, lands, tenements, and hereditaments, goods and chattels of the aforesaid hospital." It then gives the same powers to the successors of the said governors, and declares that such statutes and ordinances shall not be repugnant, contrary, or derogatory to the laws, statutes, rights, or customs of the kingdom of *England*.

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In pursuance of the powers granted by the charter, *the original governors made bye-laws or statutes for the election, government, and removal of the principal and poor men in the hospital; by which it is ordained that no principal or poor man shall be eligible to be admitted unless he be forty years of age at the least, and be unmarried, nor shall they, being admitted, continue in the said hospital unless they continue to be unmarried. The said statutes also ordain, "that when any of the poor or sick men shall die, resign, give over his his place, or for any offence or other lawful and reasonable cause be removed, the principal shall give notice to the governor (whose turn it is to nominate a poor man) of the same."* The statutes relating to the removal of the poor men order that every poor man dwelling in the hospital shall work at any trade, according to his strength, that is not noisy or noisome, and by no means give himself to "idleness, drunkenness, vagrant life, or begging; and the principal shall inquire and report to the governors which of the said poor or sick men shall be idle, and which shall resort to the alehouse or place of great disorder, to the intent that all the said governors, or such governors which with the most part of the assistants — (the assistants are elected by a majority of the governors, and have no voice in appointing the poor; the governors elect a governor, on death or resignation, from the assistants) — shall assemble at the said house at some convenient time by any of the governors appointed therefore, after reasonable notice of that time given to all the rest of the governors and assistants for the time being to examine the case, may instantly inflict such punishment upon the offenders by *abatement of their wages, expulsion or*

*otherwise*, as they shall think that the offence shall deserve."

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It was objected on the behalf of the said *Thomas Waddington* that the claimants above mentioned had no estate which entitled them to have their names respectively retained upon the list of voters for the said parish of *Rothwell*, inasmuch as the power of amotion by the governors contained in the charter of incorporation, and which was not exhausted or limited by the subsequent bye-laws, prevented them respectively from acquiring any estate of freehold by virtue of their appointment. The revising barrister decided in favour of the objection, and expunged the names from the list.

*Maunsell* for the appellant. The governors of the hospital, being incorporated by charter from the Crown, are to appoint the principal and inmates. In the appointments which they make, nothing is said about the estate taken by the principal and inmates, and, therefore, they must be presumed to be appointments for life, conferring upon the appointees the right of voting for the county. It is true, that by the charter of *Elizabeth* the governors have the power of removing the principal and inmates "*toties quoties sibi, aut eorum numero majori, conveniens fore videbitur*;" but the word "*conveniens*," as used in the charter, is not a term like "*durante bene placito*," implying an arbitrary power of removal. The charter may receive a contemporaneous exposition, and the bye-laws of the hospital may be properly referred to for that purpose. The words of a grant from the Crown may be *extended*, by contemporaneous exposition and constant usage, even *beyond* their natural import, so as to confer a right to exercise

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an office within a city and the liberties thereof, granted only to be exercised within the city; *The Mayor of London v. Long* (a). *A multo fortiori*, therefore, contemporaneous exposition and subsequent usage are receivable to shew that the words of an ancient charter were used in a more *limited* sense than that in which they are now understood. Contemporaneous documents were resorted to, in order to explain the meaning of a charter, in *The Governors of Lucton School v. Scarlett*. (b) In the present case the *original* governors, pursuant to the powers granted by the charter of incorporation, made certain bye-laws for the election, government, and removal of the principal and inmates; and as those bye-laws specify the causes for removal, it must be presumed that the original governors did not understand the word "*conveniens*" as conferring upon them an unlimited power of removing from the hospital. That view of the meaning of the word is confirmed by subsequent usage, which is always receivable to explain any doubtful words in a charter; *The Mayor of Hull v. Horner* (c); *Rex v. Varlo* (d); *Blankley v. Winstanley*. (e) It is found in the case, that no instance is recorded of any principal or inmate having been expelled the hospital. It is submitted, therefore, that they take, upon their appointment, an equitable estate for life, defeasible only upon their marrying, or otherwise infringing the bye-laws; and the law will not presume such an infringement. In effect, the estate is to be held during good behaviour; and in *Cruise's Dig. tit. Offices*, it is said (g): "If an office be granted to a person *quamdiu*

(a) 1 *Camp.* 22.(b) 2 *Y. & J.* 330.(c) 1 *Cowp.* 102.(d) *Id.* 248.(e) 3 *T. R.* 288., *per Buller J.*(g) *Tit. xxv. § 27.*

*se bene gesserit*, the grantee has an estate for life. For, as nothing but misconduct can determine his interest, no one can prefix a shorter time than his life; since it must be by his own act, which the law will not presume, that his estate can determine." [Tindal C.J. Is there any estate at all vested in the principal and inmates? The estate is conveyed to the governors.] The corporation are mere trustees for the benefit of the principal and inmates, who are in receipt of the profits of the estate, and therefore, under the stat. 6 *Vict. c. 18. s. 74.*, are entitled to vote for the county.

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*Byles Serjt., contra.* The revising barrister has rightly decided that these parties are not entitled to vote. Their claims are not made in respect of any particular room, or portion of the hospital. Without inquiring, however, whether they have estates of freehold within the meaning of stat. 8 *Hen. 6. c. 7.* & stat. 10 *Hen. 6. c. 2.*, it is sufficient to contend that they have not estates for life. They are removable by the governors "as often as it shall seem convenient to them;" — words not very unlike those which used to be inserted in the commissions of the judges of the realm, before the Revolution, viz. "*durante bene placito nostra*." The words of the charter are not "as often as it shall be," but "as often as it shall seem convenient." The discretion of the governors to remove is unfettered, and, therefore, the tenure under which the inmates hold their appointments is not of such a character as to confer the right of voting.

*Maunsell*, in reply, referred to *Wynne v. Wynne* (a); *Co. Litt. 42 a.*; *Wilkinson v. Malin*. (b)

(a) 2 *M. & G.* 19. note (a). (b) 2 *Tyr.* 544. *S. C.* 2 *C. & J.* 636.



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TINDAL C. J. It appears to me that the parties who claimed to have their names inserted in the register did not take a freehold estate in the property in question. The letters patent of incorporation to the governors contain a power to the trustees to nominate whom they think proper, and also a power of removal, which is expressed in the most general terms — “so often as it shall seem to be convenient to them, or the greater number of them.” Words more general in their import, or giving a wider exercise of discretion, can hardly be conceived. Although I do not dissent from the general proposition, that a charter may receive a contemporaneous exposition from the bye-laws, yet I do not see that the bye-laws, in the present instance, carry the case any further; for they reserve to the governors the power of removal for any “offence, or *other lawful and reasonable cause*.” Now it is not very difficult to suggest a reasonable cause for removal, without any offence having been committed by an inmate of the hospital. I can suppose the case of a man having suddenly become rich; an event which would make it very improper for him to receive the proceeds of a charitable bequest. I am of opinion, therefore, that these parties did not take a freehold estate, and that the decision of the revising barrister was right.

COLTMAN J. Had the terms of the charter been somewhat different from what they are, there might have been more room for Mr. *Maunsell*’s argument; but the words are, “So often as it shall seem to be convenient *to them, or the greater number of them*.” An estate granted upon such terms, is an estate held during pleasure, not for life.

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MAULE J. The question whether these parties have an estate for life depends upon the nature of their appointments by the governors. The power of appointment is limited by the clause in the charter, which authorises the governors to “elect, nominate, and assign, appoint, license, deprive, expel, and amove” the principal and inmates, “so often as it shall seem to be convenient to them, or the greater number of them.” The charter being wholly written in Latin, the word “*conveniens*” must have borne the same meaning in the time of Queen *Elizabeth* as it did in the days of *Augustus Cæsar*, or as it bears now, in the reign of Queen *Victoria*. The words in question mean, in my opinion, “as it shall seem fit to them.” An appointment of that kind, as it seems to me, can never confer any right on a person except such as might be taken away at the discretion of the trustees. This is not at all like a case where words are used sufficiently operative to create an estate, which may be afterwards defeated by a clause of forfeiture. I think, therefore, that the revising barrister was right in his decision.

ERLE J. Without discussing, in this case, the question whether the nature of the property was sufficient to qualify the claimants, I think that the decision of the revising barrister was right. The bye-laws did not, and could not, restrict the powers of the trustees. As to the argument from usage, it is perfectly clear that the continuance of an estate is no test whatever to shew that the estate, as originally created, was good.

Decision affirmed.

November 21.

SIMPSON, Appellant, and WILKINSON, Respondent.

By stat.  
35 *Elix. c. 7.*,  
it was enacted  
that for the  
space of twenty  
years next  
ensuing, per-  
sons might  
make feoff-  
ments to the  
use of the  
poor, and for  
the provision  
or maintenance  
of houses of  
correction or  
abiding-houses,  
of lands and  
tenements, in  
the same man-  
ner as might  
have been done  
under a former  
statute, 18 *Elix.*  
*c. 20.* The  
stat. 39 *Elix.*  
*c. 5.*, after re-  
ferring to the  
stat. 35 *Elix.*  
*c. 7.*, recited  
that no hos-

UPON a consolidated appeal from the decision of  
*John Mellor*, Esquire, the revising barrister for the  
northern division of the county of *Northampton*, the  
following case was stated by him for the opinion of the  
Court : —

*John Dauntecy Simpson* duly objected to the names  
of *Henry Allen* and of twelve others, similarly qualified,  
being retained on the register of voters for the northern  
division of the county. The description of the said  
*Henry Allen*, on the register, was as follows : —

Henry Allen.	Lord Burghley's Hos- pital, St. Martin's, Stamford Baron.	Freehold te- nement or room.	Henry Allen, occupier.
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The said *Henry Allen* was appointed by the Marquis  
of *Exeter* to be one of the bedesmen of the hospital,  
hereinafter described, in the room of *William Benson*,

hospital, house of correction, or abiding-place, could be incorporated but by the Crown, or  
under licence from the Crown by letters patent, and enacted that hospitals might be  
founded, by deed inrolled in Chancery, and that such hospitals should be incorporated and  
have perpetual succession.

A freehold building, called *Burghley Hospital*, was divided into several rooms, each of  
the annual value of 4*l.* Each room was separately inhabited by a bedesman, appointed  
under certain ordinances purporting to have been made A.D. 1597 (before the stat. 39 *Elix.*  
*c. 5.*), but of which only a printed copy existed. No deed, or charter, or letters patent  
relating to the hospital could be found; neither was there any common seal, nor any in-  
rolment under the stat. 39 *Elix. c. 5.* The ordinances referred to certain feoffees and their  
heirs, but none were known to exist. No person admitted as a bedesman had ever been  
known to be removed during his life, but a power of amotion was contained in the ordi-  
nances (by which the hospital was governed) for certain infirmities and vices specified  
therein. *Held*, that a legal foundation for the hospital might be presumed, not necessarily  
investing the bedesmen with a corporate character, and that they were entitled to a separate  
equitable estate of freehold in their respective rooms.

No objection can be argued upon the hearing of an appeal which is not raised by the  
case stated by the revising barrister.

deceased. The following is a copy of the appointment, duly stamped.

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“Be it known that I, The Most Honourable *Brownlow*, Marquis and Earl of *Exeter*, and Baron of *Burghley*, have nominated and appointed, and by these presents do nominate and appoint, *Henry Allen*, of *Stamford*, in the county of *Lincoln*, to be one of the brethren of the hospital of *St. Martin's, Stamford Baron*, in the county of *Northampton*, in the room and place of *William Benson*, lately deceased. And I do hereby require and direct that the said *Henry Allen* be accordingly admitted into the brotherhood of the said hospital, and have, receive, and enjoy all the benefits, profits, and advantages which, as one of the brethren thereof, he ought to have and enjoy.

“Given under my hand this 22d day of *May* 1834.

“(Signed) *Exeter*.”

In the parish of *St. Martin's, Stamford Baron*, is a freehold building called by the name of “*Burghley Hospital*,” or occasionally “*St. Martin's Hospital*,” which is divided into several rooms, each of which is respectively inhabited by a bedesman, appointed under the rules hereinafter mentioned, and by which the hospital is governed. Each bedesman keeps the key of his room, and the successor of each deceased bedesman occupies the same room as did his predecessor. These rooms are on the ground floor. The upper story of the building extends over all the said rooms, and is let as a granary by the warden and bedesmen at an entire rent, which they divide amongst themselves equally. Each room occupied is of the annual value of 4*l.*, independently of the rent received for the granary. The

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hospital is not rated to any parochial rates, nor are any of the bedesmen rated in respect of their rooms. The said *Henry Allen* was duly qualified for admission, according to the rules and ordinances by which the hospital is governed, a copy whereof is hereunto annexed, and is to be taken as part of this case. No person appointed and admitted as a bedesman has ever been known to be removed during his life. *No deed of any description can be found relating to the hospital.* All the proper offices and places of deposit have been searched, and *no trace of any original rules and ordinances, or of any charter, deed or other document relating to it has been discovered, neither does any enrolment, under the 39 Eliz. c. 5. exist, or any letters patent.* The rules refer to certain "*feoffees and their heirs,*" but none are known. It was proved that the hospital was governed strictly by the printed unsigned copy of the rules and ordinances, which were produced from the hospital, where they are usually hung up in the common dining-room. *There is no trace of any common seal, neither does there appear any record of the warden and brethren suing or being sued in any corporate name, or of any bye-laws made by them, nor have they ever been summoned on juries.* The foreman, according to the ordinances, is called the warden of the almshouse of Lord *Burghley*, and the other twelve, the almsmen or bedesmen. The sum of 2*l.* 14*s.* weekly is paid by the steward of the Marquis of *Exeter* to the warden of the hospital, out of the rents of *Cliff Park*, for himself and the bedesmen. The Marquis of *Exeter* is the heir male of Sir *William Cecil*, in the copy of the ordinances mentioned, and the owner of his house, and Lord of *Burghley*, and has recently repaired the hospital at his own expense.

It was contended on the part of the objector,

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1st. That if the claimants had any freehold estate, they had such estate only as members of a corporation aggregate.

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2d. That they had no freehold estate at all.

3d. That even if they had any freehold estate, it was an estate in joint tenancy in the hospital, and not a separate and exclusive estate in the rooms, and that the claims, therefore, were bad.

The barrister overruled these several objections, and decided to retain the name of the said *Henry Allen*, and also the names of the said twelve other persons respectively, on the list of voters for the said parish of *St. Martin's, Stamford Baron*, being of opinion that, under the circumstances, a legal foundation might be presumed, not necessarily investing the claimants with a corporate character, and that they were respectively entitled to a separate freehold estate in their rooms respectively.

The following are the material portions of the ordinances annexed to, and forming part of, the case: —

“Ordinances made by Sir *William Cecil*, Knight of the Order of the Garter, Baron of *Burghley*, for the order and government of thirteen poor men (whereof one to be the warden) of the hospital in *Stamford Baron*, in the county of *Northampton*, to remain in a chest in a chamber in the said hospital, locked up with two several locks, the keys whereof to remain in the custody of the vicar of *St. Martin's* and the bailiff of the manor.

“*Vicesimo Augusti, anno tricesimo nono Eliz. Reg. et anno Dom. 1597.*

“1. The first five shall be named, chosen, and admitted by me, *William Lord Burghley*, during my life, and after by my heir male, that shall be owner of my

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house and Lord *Burghley*, whereof the foremost shall be called the warden of the almshouse of Lord *Burghley*.

“ 2. The next four, that is the sixth, seventh, eighth and ninth, shall be named and admitted by the vicar of *St. Martin's* for the time being, the bailiff of the manor of *Stamford Baron*, in the county of *Northampton*, and the eldest churchwarden of *St. Martin's* and by them that shall be (a) in the nunnery otherwise called *St. Michael's*, and in the inn called the *George*, in *Stamford Baron*, or the greater number of them.

“ 3. The last four, viz., the tenth, eleventh, twelfth and thirteenth, shall be named and admitted by him that shall be for the time alderman for the borough of *Stamford*, in the county of *Lincoln*, and by the recorder of that town, the steward and bailiff of the said manor of *Stamford*, or the major part of them, whereof the alderman to be one.

“ 8. Item. — In the nomination of the said warden and twelve poor men, the circumstances following shall be observed, or else none otherwise named shall be allowed.

“ 9. First, every one so to be named shall be presented in the church of *St. Martin's* upon a *Sunday* in the forenoon, to the vicar of the said church, and by him to be allowed to be of honest Christian profession, and able and well disposed to say the Lord's Prayer, the Creed, and to learn to answer to the Ten Commandments, as are prescribed to such as are catechised.

“ 10. Item. None shall be admitted thereto but such as shall have been born in the counties of *Northampton*, *Lincoln*, or *Rutland*, or that have dwelt for the

(1) This blank appeared in the original case.

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space of seven years within seven miles of the borough of *Stamford*, except the Lord of *Burghley* shall for some reasonable cause dispense therewith; neither shall any be thereto allowed that are under thirty years of age, or that hath any certainty of living above the value of 53s. 4d. by the year; nor any that is known to be diseased of any leprosy, or the pox called the French pox; nor any drunkard, barrator, or infamous for adultery; these and such like faults.

“ 11. Item. The said poor men shall and may, as near as may be, be chosen out of such as have been either honest soldiers or workmen, as masons, carpenters, or others, artisans of handicraft, or labourers in any work or in husbandry, or servants that are by sickness or any other impediment unable to get their livings by their handiwork, or by daily service, as beforetime they have done; and if after they shall be chosen to the places, any of them shall fall into such infirmities or infectious diseases, or be justly infamed and convinced of such notable vices as above in the next former article mentioned, they shall be displaced by them by whose authority they were placed, and their allowance to cease within fourteen days after their displacing; against which time their places shall be supplied by such as have displaced them.

“ 12. Item. None of the said twelve poor men shall in any alehouse or other places play at cards, dice, or any other unlawful game; but if after, on a warning given to them by the vicar of *St. Martin's*, or of the bailiffs of *Stamford Baron*, or of the manor of the borough of *Stamford*, to forbear from such unlawful play, any one shall be the second time committing such offence prohibited, he shall be removed from his place, and shall



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receive no more weekly relief except he, in acknowledging his fault, and promising of amendment, shall be restored by the said vicar and bailiff, and two other of the number that first placed him.

“ 17. Item. The vicar of *St. Martin's*, or the minister, shall, upon the first *Sunday* of every quarter of the year, assemble them together in the church before evening prayer, and, severing them asunder, hear them the Lord's Prayer, the Creed, and to answer to the Commandments; and such as will not in convenient time learn and be able to say the same, shall be avoided from his room, after fourteen days' space given him to learn the same; and the vicar or minister shall have for his labour 5s. every such *Sunday*, and the parish clerk 12*d.* for attending upon the vicar.

“ 21. Item. As these poor men shall have at the first their several rooms allowed them in the almshouse, so shall they, during their lives or their continuance in their places, continue their lodging, and every one as he shall succeed to the void places, so shall he succeed in the lodgings without any change.”

The case was argued by *Byles Serjt.* for the appellant. First, the bedesmen have no freehold estate at all. Assuming, for the purposes of this part of the argument, that they are not a corporation aggregate, the question is, whether they have an equitable estate of freehold. It is submitted that they have not. The tenements or rooms which form their qualifications could not be the subjects of sale or mortgage, neither would the property be extendible for their debts under the statute of frauds, 29 *Car. 2. c. 3. s. 10.*, nor under stat 1 & 2 *Vict. c. 110. s. 11.* [*Erle J. Sup-*

posing they had been turned out after twenty years' possession, could they not maintain ejectment?] It is apprehended they could not. But, secondly, it is almost impossible, upon looking at the ordinances, not to see that these bedesmen must be members of a corporation aggregate. These ordinances bear date the 20th of *August*, 1597, in the 39th year of *Elizabeth*. In that year an act of parliament passed (cap. 5.), enabling parties to endow hospitals. The regnal year commenced on the 17th *November*, 1596; but the act would relate to the first day of the session, which was the 24th of *October*, 1597. The ordinances, therefore, were made before the act passed. Now, before the stat. 39 *Eliz. c. 5.*, no hospital could have been erected without the queen's licence; but that act, after referring to a statute passed in a preceding session, and reciting that "her most excellent majesty, understanding and finding that the said good law has not taken such effect as was intended, by reason that no person can erect or incorporate any hospital, houses of correction, or abiding places, but her majesty, or by her highness's special licence by letters patent under the great seal," proceeds to enact that all persons seised of an estate in fee-simple, their heirs, &c., shall be empowered, by deed inrolled in the High Court of Chancery, to erect and endow hospitals; and that "the same hospitals or houses so founded shall be incorporated, and have perpetual succession for ever in fact, deed, and name." If, therefore, the hospital was founded before the act passed, it had no legal commencement, as it does not appear that the queen's licence was first obtained, there being no trace of any letters patent. In that case, the hospital would be

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maintained by a mere act of kindness on the part of the *Exeter* family; but if the hospital was founded after the passing of the act, the hospital must form a corporation aggregate, of which the bedesmen are members. In either point of view, the bedesmen would have no right to vote. In the third place, supposing these parties to have an equitable estate, they have not an estate for life. The 17th rule provides that such bedesman as will not in convenient time *learn* and be able *to say* the Lord's Prayer, the Creed, and *to answer* to the Commandments, shall be avoided from his room, after fourteen days' space given him to learn the same. Now a bedesman may be *dumb*. So, a party may be removed if he be a leper, which he might become without any fault of his own. [*Tindal* C. J. The 21st rule, in speaking of the rooms allowed to the bedesmen in the almshouse, uses the words "during their lives." Does not that show that an estate for life was contemplated by the founder of the hospital? *Erle* J. If a party has a freehold estate, is it any objection to his qualification that there is a defect in his title?] There is another objection to the votes of these parties, that they are in the receipt of alms. [*Erle* J. Can any case be found in which an estate for life in lands or tenements was considered to be alms? *Tindal* C. J. It does not appear that this objection was taken before the revising barrister. Three objections were urged before him, but none of them touch upon or comprehend this point.]

*J. Hildyard* for the respondent. The Court cannot entertain the question whether this hospital was created by feoffment or by incorporation. The 27th section of the stat. 35 *Eliz. c. 7.*, which appears to be the act to

which the stat. 39 *Eliz. c. 5.* refers, enacts that it shall be lawful for every person, during the space of twenty years next ensuing, to make feoffments, &c., in fee-simple, as well to the use of the poor, as for the provision, sustentation, or maintenance of any house of correction, or abiding houses, of all or any part of his lands, &c., and in such manner, &c. as he might have done under the stat. 18 *Eliz. c. 20.* The revising barrister has found that this hospital was founded under a feoffment, and there can be no appeal from his decision upon a question of fact. [He was then stopped by the Court.]

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TINDAL C. J. The only question open to us is, whether the barrister was wrong, in point of law, in saying that there might be some legal commencement to the estate, not necessarily investing the claimants with a corporate character. I think not only that he was not wrong in point of law, but that the facts of the case fully warrant such a conclusion. The ordinances being made prior to the stat. 39 *Eliz. c. 5.*, one has a right to presume that, when that act passed, matters were going on in the course which the law then allowed. I think, therefore, that the revising barrister was right.

COLTMAN J. concurred.

MAULE J. I also think that the revising barrister came to a right conclusion. The ordinances were made in *August* 1597, and therefore before the stat. 39 *Eliz. c. 5.* was passed. It might well be that the hospital was founded under a licence from the crown, which, after a lapse of 250 years, might with great propriety be pre-

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sumed. I do not think it likely that Lord *Burleigh* would have had any difficulty in procuring such a licence, and it is not very probable that, without it, he would have undertaken an enterprise of that description. I think, therefore, that the legal estate vested in the feoffees of the hospital, and that the bedesmen have such an equitable estate as entitles them to vote.

ERLE J. concurred.

*J. Hildyard* applied for costs.

MAULE J. My own opinion is, that the successful party ought to have his costs in all cases, unless there be some strong reason to the contrary.

The other judges, however, thinking that this was not a case for costs, the application was refused.

Decision affirmed, without costs.

November 21.

NUNN, Appellant, and DENTON, Respondent.

A building, containing a ground floor, which was used as a cow-house, and an upper chamber, having a fireplace and a window, and furnished with a bed and chairs, where a party resided and slept, is a house, within the meaning of stat. 2 W. 4. c. 45. s. 27.

THIS was a consolidated appeal from the decision of *Charles Evans, Esq.*, the revising barrister for the borough of *Bury St. Edmunds*.

The respondent's name appeared in the list of persons entitled to vote in the election of members for the borough, in respect of the occupation of property in the parish of *St. Mary*, as follows : —

The Court will only decide such points of law as are stated in the case drawn up by the revising barrister.

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Christian Name and Surname.	Place of Abode.	Nature of Qualification.	Name of Street, &c. where situate.
William Denton.	Rushbrooke.	Building and land.	Haberden.

The respondent also duly claimed to be inserted in the said list in respect of the occupation of the same property, as follows : —

Christian Name and Surname.	Place of abode.	Nature of Qualification.	Name of Street, &c. where situate.
William Denton.	Rushbrooke.	House and land.	Haberden.

The respondent, who was duly objected to in both cases by the appellant, appeared in support of his claim to be retained, or to be inserted in the said list. It appeared that at *Michaelmas*, 1838, the respondent and *John Frederick Denton*, *Henry John Hasted*, and *John Thomas Ord*, jointly hired a piece of pasture land in the said parish for seven years, at a rent of 3*l.* per annum, and that shortly afterwards they erected a building on the said land, at an expense of 45*l.* The building was substantially built of brick and stone, with a tiled roof. The lower part consisted of a cow-house and stable. Over the stable was a chamber about twelve feet square, in which was a fireplace and window. There was a staircase from the stable to the chamber, and the only entrance to the building was by folding-doors opening into the cow-house. The chamber was furnished with a bed and chairs by the respondent and his co-lessees. The pasture was used for taking in the cattle of persons in the neighbourhood to agist, at a certain price per head per week ; some cattle belonging to the respondent were also agisted there. When the parties hired the

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land, they employed a person named *Clarke* to collect the money paid for agistment, and it was arranged between them that *Clarke* should find some person to reside in the building in question to keep the keys of the gate of the pasture, and look after the cattle, he, *Clarke*, residing too far off to do so himself. *Clarke* accordingly put his brother-in-law, *Betts*, into the building: he maintained *Betts*, but paid him no wages. *Betts* resided and slept in the chamber in the building, kept the key of the gate of the pasture, looked after the cattle, and occasionally received the agistment money. The lower part of the building was sometimes used by the cattle when ill; the cows were occasionally milked there; and the respondent and some of his co-lessees put their horses in the stable. Each of the four lessees had a key to the doors of the building. The building was suitable for the purposes for which it was used; it was conveniently placed for the occupation of the pasture; and it was necessary that some person should reside on or near to the gate of the pasture, to look after the cattle, and to prevent the owners from taking them away without paying for the agistment. The building continued in the same state until *December* 1843, when part of the stable was converted into a room, having a fireplace, and a door opening into the pasture; and *Betts* continued to reside in the building, and the pasture was occupied as before. The respondent proved that he was a duly qualified voter for the said borough, subject to the questions hereinafter mentioned.

The barrister expunged the name of the respondent from the list of voters in respect of the qualification "building and land," on the ground that the building

was a house, and should have been so described; and he inserted his name in the list in respect of his qualification, "house and land," as claimed by him.

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If the Court of Common Pleas should be of opinion that the said building and land were not occupied by the respondent and his co-lessees, within the twenty-seventh section of the 2 *W. 4. c. 45.*, the list was to be amended by expunging the name of the respondent therefrom. If the Court should be of opinion that the building and land were occupied by the respondent and his co-lessees, and that his qualification was properly described as "building and land," the list was to be amended by expunging the name of the respondent in respect of the qualification, "house and land," and inserting his name as it originally stood on the list in respect of the qualification, "building and land." And if the Court should be of opinion that the building and land were occupied by the respondent and his co-lessees, and that his qualification was properly described in his claim as "house and land," the list was not to be amended.

*Manning* Serjt. for the appellant. Assuming the structure described in the case to be a building within the meaning of the twenty-seventh section of the stat. 2 *W. 4. c. 45.*, the question for the opinion of the Court is, first, whether it did not cease to be such a building, and become a *house*, in *December 1843*. If so, the respondent did not occupy the house (which was part of the qualification in respect of which he claimed to have his name inserted in the list of voters), for twelve calendar months prior to the 31st day of *July, 1844*. Now, the building was clearly not a house before *December 1843*, and as the claim is not made in respect of



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a "building and house," the clause relating to successive occupation, 2 *W. 4. c. 45. s. 28.*, will not assist the respondent. In *Bartlett v. Gibbs* (a), the Court decided that the claimant must describe all the premises which constitute his qualification, but there is no such description in this case as "house and building." [*Maule J.* You contend that the building did not become a house before *December, 1843.* The Court, however, are bound to presume, in favour of the decision of the revising barrister, any state of facts consistent with those which are stated in the case. It is for the appellant to shew that the building was *not* a house prior to *December 1843*, and that it *was* a house afterwards. May not a house consist of a chamber, and a cow-house under it? *Tindal C. J.* Was it not a house, when a man was put in it to sleep there?] The revising barrister has not found that the building was a house before *December, 1843.* [*Erle J.* He has found that the respondent was *qualified* in respect of a "*house*" and land.] It is submitted that there was no sufficient occupation to make it a house. *Clarke* was a mere agent employed to collect the agistment money, not a domestic servant. [*Maule J.* Would not an occupation by a non-domestic servant do?] It is submitted that it would not be sufficient. There must be an occupation of the house as a dwelling-house. [*Erle J.* Are you not confounding *occupation* with *residence*? *Tindal C. J.* The occupation of the land was by agisting it, and of the house, by putting in a servant to attend to the agisting. It may be a very disagreeable house, but still it is a house. In the case of a mews, the horses are stabled below, and

(a) *Antà*, p. 73.

the coachman sleeps in a room above; there the occupation of the servant is the occupation of his master.] There is a further objection to this qualification, that the place of the respondent's abode is stated to be "*Rushbrooke*," without any further description. [*Maule J.* Was that objection taken before the revising barrister?] That does not appear upon the case, nor is it necessary that it should be stated. The revising barrister is not required to state what objections were taken before him. The forty-second section of the stat. 6 *Vict.* c. 18. merely directs him to "state in writing the facts which, according to his judgment, shall have been established by the evidence, and which shall be material to the matter in question; and also his decision upon the whole case." [*Tindal C. J.* The clause also requires him to state his decision upon the *point of law appealed against*. You have no right to raise new points now.]

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*Byles Serjt., contra*, was not called upon by the Court.

TINDAL C. J. I do not think that the appellant has any right to make the last objection. (a) As to the other point, I think the building described is within the fair meaning of the word "*house*." It was a place where a party dwelt, as people usually do dwell, by staying there during the day, and sleeping there at night. That being the case, I do not understand why it should cease to be a house, because cattle were allowed to occupy the ground floor. The case is very clear, and I think that the decision should be affirmed with costs.

The other judges concurred.

Decision affirmed, with costs.

(a) See the last case.

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November 21.

Moss, Appellant, and The Overseers of St.  
MICHAEL, LICHFIELD, Respondents.

Premises in  
*St. Michael,*  
*Lichfield,* being  
jointly occupied  
by a father and  
son, three rates  
were made for  
the relief of the  
poor of the  
parish in the  
year ending  
*July 1844.*

In the third  
rate the names  
of father and  
son were in-  
serted, but the  
name of the  
son was left  
out of the first  
two rates, the  
overseers not  
being aware,  
until after  
payment of the  
first and second  
rates, that there  
was a joint oc-  
cupation of the  
premises, al-  
though the son  
had paid the  
first and second  
rates with his  
own hand to  
the collector.

*Held,* that  
the son was not  
entitled to be  
registered, not  
having been on  
the first two  
rates, nor *bond*  
*fide* called upon  
to pay them.

*Held,* also,  
that there was  
no misnomer,  
or inaccurate  
or insufficient description of the person occupying, within the meaning of stat. 6 Vict.  
c. 18. s. 75.

AT a Court held before *Thomas Bros,* Esquire, the  
revising barrister for the city of *Lichfield,* *John*  
*Brown Moss* claimed to have his name inserted in the first  
list of voters for the parish of *St. Michael,* in the said  
city, when the barrister rejected the claim, subject to  
the opinion of the Court of Common Pleas on the fol-  
lowing case:—

*John Brown Moss* claimed as occupier of a building  
and land situate at *Glass Croft,* in the said parish. In  
support of his claim, it was proved that the claimant  
occupied, jointly with his father, *William Moss,* a build-  
ing together with land, of a nature to confer the fran-  
chise within the provisions of the twenty-seventh sec-  
tion of stat. 2 W. 4. c. 45.; and that the claimant and  
the said *William Moss* had occupied the same jointly  
for more than twelve calendar months next previous to  
the last day of *July 1844,* as tenants thereof, under the  
same landlord, at the annual rent of 40*l.* and upwards,  
and that both of them, the claimant and the said  
*William Moss,* would be entitled to have their names  
inserted in respect of their occupation of the building  
and land, provided they were both of them duly rated  
in respect of the same to all rates for the relief of the  
poor in the said parish, made during the time of their  
joint occupation as aforesaid. There were three rates  
made for the relief of the poor of the said parish during

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the said period; in the first and second of which the name of the said *William Moss* alone was inserted as the person rated in respect of the said premises, and the name of the claimant was wholly omitted from both of the last-mentioned rates in respect of the said premises; but to the third rate the claimant was rated, and his name, jointly with the name of the said *William Moss*, was inserted in the last-mentioned rate in respect of the said premises. The claimant being the person liable to be rated for the said premises jointly with his father, the said *William Moss*, had *bonâ fide* paid with his own hand to the collector the two first-mentioned rates, and all sums of money due for rates in respect of such premises during their joint occupation aforesaid; but the overseers of the said parish were not aware till the beginning of *May* 1844, and after such payment by the claimant of the first and second rates, that the claimant did occupy the said premises jointly with his father, the said *William Moss*.

It was contended that, by virtue of the seventy-fifth section of stat. 6 *Vict. c.* 18. the claimant ought, under the above circumstances, to be considered as having been rated, and as having paid all the rates in respect of the said premises within the meaning of the twenty-seventh section of stat. 2 *W. 4. c.* 45., and that he was entitled to have his name inserted in the said list in respect of the premises aforesaid. The revising barrister was of opinion, that the omission of the name of the claimant, under the above circumstances, did not constitute a misnomer, or inaccurate or insufficient description in the said rate, of the person occupying the said premises within the meaning of the stat. 6 *Vict. c.* 18. s. 75., and was of opinion, on the whole case,

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that the claim of the said *John Brown Moss* had not been made out. The question for the opinion of the Court was, whether, under the provisions of the stat. 6 *Vict. c. 18. s. 75.*, the claimant ought to be considered as having been rated, and having paid all rates in respect of the said premises, within the meaning of the stat. 2 *W. 4. c. 45. s. 27.*

*Byles* Serjt., for the appellant. The question is, whether there has not been, in this case, a sufficient virtual rating of the appellant, although the rate was made in his father's name only. By the twenty-seventh section of the Reform Act, it is provided that no occupier of premises of the annual value of 10*l.* shall be entitled to vote for a city or borough, unless he shall have been rated, in respect of such premises, to all rates for the relief of the poor made during the time of his occupation, nor unless he shall have paid, on or before the 20th day of *July*, all the poor's rates which shall have become payable from him in respect of such premises previously to the 6th day of *April* then next preceding. But, by stat. 6 *Vict. c. 18. s. 75.*, it is enacted, that where any person shall have occupied such premises for twelve calendar months next previous to the last day of *July*, and, being the person liable to be rated for such premises, shall have been *bonâ fide* called upon to pay, in respect of such premises, all rates made during the time of his occupation, and shall have *bonâ fide* paid, on or before the 20th day of *July*, all sums of money which he shall have been called upon to pay, in respect of such premises, for one year previously to the 6th day of *April* then next preceding, he shall be considered as having been rated, and as having paid all rates, in re-

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spect of such premises, and be entitled to be registered in respect of the same, notwithstanding any misnomer, or inaccurate or insufficient description in any rate of the person so occupying. It is submitted that, under the provisions of the latter statute, there has been a sufficient rating of the claimant. It is found by the case that he was liable to be rated, and that he had *bonâ fide* paid the rates. [*Maule J.* The difficulty is, that he has paid the rates, without having been *called on* to pay them.] The occupation of the premises being joint, there was a *quasi* partnership occupation. If a firm be rated in the name of "*Jones and Co.*," all the members of the firm, although not expressly named, are rated. In *Reg. v. Hulme (a)*, a question arose upon the construction of the stat. 4 & 5 W. 4. c. 76. s. 66. which enacts, that no settlement shall be acquired and completed by occupying a tenement, unless the person occupying the same shall have been *assessed* to the poor rate, and shall have paid the same in respect of such tenement for one year. It appeared, in that case, that the pauper occupied a tenement and paid the rent and poor rate for a year; but, in the rate, the name of the occupier was entirely omitted. It was held, notwithstanding, that the pauper was sufficiently assessed to satisfy the statute. The word "charged" which is used in the stat. 3 & 4 W. & M. c. 11. s. 6., has the same meaning as the word "assessed," and it has been repeatedly held, in the construction of that act, that the total omission of the name of the party really rated will not prevent his gaining a settlement. [*Maule J.* In *Reg. v. Hulme (a)*, no person was charged, but the property was

(a) 4 Q. B. 538.

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assessed. *Erle J.* Here the overseers did not intend to charge the appellant, and they did charge his father. It is clear that, if a firm is intended to be rated, all the partners are included in the rate; but the overseers could not have intended to charge the appellant, because they did not know of the joint occupation till *May, 1844.*] As between his father and himself the appellant was charged, because he was bound to contribute his quota of the rate.

*Kinglake Serjt.*, who appeared for the respondent, was not called upon.

TINDAL C. J. It appears to me that this case does not fall within the stat. 6 *Vict. c. 18. s. 75.* That section provides for cases of misnomer, or inaccurate or insufficient description of the person occupying, but here another person is charged. By that section also, a party must have been *bonâ fide* called on to pay the rate, which was not the case in the present instance.

COLTMAN J. The claimant in this case was neither rated nor called upon to pay the rate.

MAULE J. The effect of the seventy-fifth section of the Registration of Voters Act is, that a blunder of the overseers in wrongly stating the name or property of a party upon the rate, shall not vitiate his vote. Here the appellant was not upon the rate, but his father was.

ERLE J. concurred.

*Kinglake Serjt.* applied for costs.

TINDAL C. J. I think there might be some doubt upon the question. The appeal was not a mere speculation.

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Decision affirmed, without costs.



# CASES

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ARGUED AND DETERMINED

IN THE

## COURT OF COMMON PLEAS

UNDER THE STAT. 6 VICT. c. 18.

IN

HILARY TERM AND VACATION,

AND

EASTER TERM,

IN THE

EIGHTH YEAR OF THE REIGN OF VICTORIA.

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January 16. ECKERSLEY, Appellant, and BARKER, Respondent.

The situation of the premises in respect of which a party claims to vote for a county, is sufficiently described under the stat. 6 Vict. c. 18. ss. 4. and 5. (Schedule (A), Nos. 2 and 3), if the street or lane where the property is situate be stated, (none

of the houses therein being numbered) without also stating the name of the occupying tenant; but if the houses are numbered, the number also should be given.

If the premises are not in a street, or lane, or other like place, but in a road, or on a common, or the like, the name of the property should be given, if known by any, or the name of the occupying tenant.

**A**T a court held before *Richard Matthews*, Esquire, one of the revising barristers for the southern division of *Lancashire*, the respondent's name appeared on the list of voters for property situate in the township of *Chadderton*, and was objected to by the appellant. No exception was taken to the notice of objection, which was admitted. The particulars of the respondent's Christian and surname, place of abode, nature of qualification, and situation and description of the qualifying

property, appeared on the list of voters as follows; (that is to say,)

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## CHADDERTON.

Christian Name and Surname of each Voter at full length.	Place of Abode.	Nature of Qualification.	Street, Lane, or other like Place in this Parish or Township, and Number of House (if any), where the Property is situate, or Name of the Property (if known by any), or Name of the occupying Tenant; or if the Qualification consist of a Rent-charge, then the Names of the Owners of the Property out of which such Rent-charge is issuing, or some of them, and the Situation of the Property.
Barker, John.	Seedey Bank, Pendleton.	Undivided moiety of two freehold cottages.	Tinker Lane, Hollinwood.

It appeared in evidence that the respondent was seised in fee simple of an undivided moiety of two cottages, situate in *Tinker Lane, Hollinwood*, in the township of *Chadderton*. A part of the township of *Chadderton* is commonly called and well known by the name of *Hollinwood*. Part of the public turnpike road from *Oldham* to *Manchester* passes along *Tinker Lane*; all one side of which lane, and at one end thereof the whole of the said lane, is within *Hollinwood*, in the township of *Chadderton*. The other part of the said lane is within the township of *Oldham*. The division between the two townships is well and commonly known. There are from forty to fifty cottages standing along *Tinker Lane*, and occupying, with the intervals between them, a line of 200, or 250 yards in length; about ten of the cottages are in the township of *Oldham*. All the other cottages are in the township of *Chadderton*. None of the cottages in *Tinker Lane* are numbered, nor are the two cottages in respect of which the respondent

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founded his qualification as before mentioned, nor is either of them known by any name of the property. Any person inquiring in *Tinker Lane*, or in the neighbourhood, for the respondent's cottages, would readily find the cottages described in the list of voters.

It was objected, on behalf of the appellant, that the description given, namely, "*Tinker Lane, Hollinwood*," as the same appeared in the list of voters, was not a sufficient description of the situation of the qualifying property as required by statute 6 *Vict. c. 18.*, reference being also had to the forms in Schedule (A.), appended to the said statute; and that neither of the cottages being numbered, nor the property known by any name, the names of the occupying tenants must be given. The revising barrister thought that "the name of the property, if known by any," and "the name of the occupying tenant," were neither of them intended as substitutes for the number of a house in any "street, lane, or other like place," (by "other like place," understanding square, court, crescent, yard, alley, and the like,) but that they were separate and distinct heads of description of themselves, intended to apply to properties (very numerous in county qualifications) which were not situate in any "street, lane, or other like place," and not to properties which were so situate; and that if all the above descriptions were to be referred to properties situate in some "street, lane, or other like place," then the numerous properties giving county qualifications to vote, and which were not so situate, as country mansions, farms, manufacturing and other works, and the like, would be left undescribed. The barrister accordingly decided that the description given of the respondent's qualification was sufficient; and that,

under the above-mentioned circumstances, it was not necessary to insert the names of the occupying tenants, or either of them, but offered to do if the respondent wished it. The respondent declined having the occupying tenants' names, or either of them, inserted, on the ground that, in consequence of the frequent changing of tenants in small tenements of this kind, the insertion of the occupying tenants' names would probably render the description of his qualifying property less certain than if their names were omitted. The revising barrister retained the respondent's name on the register, without adding any tenant's name. Each of the cottages had an occupying tenant.

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The question for the opinion of the Court was, whether, under the circumstances mentioned and set forth in the above statement of facts, the name of the respondent was rightly retained on the list of voters, without inserting the occupying tenants' names, or one of them.

The case was argued in *Michaelmas* term (November 18th) by *Cockburn* (with whom was *Kinglake* Serjt.) for the appellant, and *Cardwell* for the respondent.

*Cur. adv. vult.*

The judgment of the Court was now delivered by

TINDAL C. J. The objection in this case was, that the description in the list of voters of the property in respect of which the respondent claimed the right to vote was insufficient, inasmuch as it omitted to state the name of the occupying tenant. The qualification is described to be in respect of "an undivided moiety of two freehold cottages in *Tinker Lane, Hollinwood*;"

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and it is stated, as a fact in the case, that none of the cottages in *Tinker Lane* are numbered, nor are either of the two cottages known by any particular name. The question therefore is, whether, under the circumstances of this case, the name of the occupying tenant is required to be inserted; and we think, upon the proper construction of the act, it is not.

The fourth section of the statute 6 *Vict. c.* 18., requires the notice of claim to be delivered or sent to the overseers, according to the form of notice set forth in Schedule (A.), and numbered 2, or to the like effect; and the form No. 2. requires the street, lane, or other like place, and number of the house (if any), where the property is situate; *or* name of the property, if known by any; *or* name of the occupying tenant to be inserted. And we think the word “or” in this form is disjunctive, and creates three different descriptions; and that it is sufficient if the qualification is brought within any one of them, namely, either the street or lane, and number, if any; the name of the property, if any; or the name of the occupying tenant, if any. And although it is contended that the fifth section of the act requires the overseers to make out, according to the form numbered 3. in Schedule (A.), an alphabetical list of claimants, containing (amongst other things) “the nature of his qualification, *and* the local or other description of his property, *and* the name of the occupying tenant thereof,” and that consequently the name of the occupying tenant must be inserted in each case; yet it appears a sufficient answer that this direction is qualified and restricted by the words which immediately follow, viz. “that the same shall be written as they are stated in the claim.”

The direction at the head of the form No. 2. appears

to us to intend that, if the house is in a street or lane, or other like place in the parish, the street or lane should be mentioned; and, if the houses are numbered, the number also should be given; but that if the house or premises be not in a street or lane, or other like place, but in a road, or on a common or the like, then the name of the property should be given, if known by any, or the name of the occupying tenant. If, however, the two latter requisites are held to apply necessarily to the house or premises when situated in a street or lane, then this inconvenience would follow, that there is no description required by the act to be given of a house or premises *not* situate in a street or lane, or other like place.

The direction given by the legislature to the overseers in the stat. 2 *W.* 4. c. 45. s. 37. for the framing of their notice according to the form No. 1. in the Schedule (A.) annexed to that act, which is a notice precisely for the same object and purpose as that required by sect. 4. of the 6 *Vict.* c. 18., is so plainly expressed as to leave no possible doubt but that the requisition to give the name of the property, or the name of the occupying tenant, only holds where the house is not situate in a street or lane, or other like place. And, as the stat, 6 *Vict.* c. 18., is made *in pari materia* with the former act, it may be properly inferred that no more is required by the latter act than by the former. We therefore think the decision of the revising barrister, that the description of the qualification of the respondent in the overseers' list was sufficient, was a proper decision, and that the same must be affirmed.

Decision affirmed.

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January 16.

PITTS, Appellant, and SMEDLEY, Respondent.

The appellant rented two floors in a house, in which the landlord occupied the shop and first floor, residing therein with his family. The appellant had exclusive control over the rooms occupied by him, and kept the keys thereof. He had also a latch-key to the street door, but this was sometimes fastened by a lock, of which he had no key, and then he entered the house through the shop. *Held*, that he had not an exclusive occupation of any premises, as owner or tenant, within the meaning of stat. 2 W. 4. c. 45. s. 27., but merely a limited enjoyment as an inmate or lodger.

**T**HIS was an appeal from the decision of *Denis Creagh Moylan, Esq.*, the barrister appointed to revise the list of voters for the city of *Westminster*.

The case (a) stated that *Charles Marshall* was owner of a house and shop, No. 17, *Catherine Street, Strand*. He occupied the shop and first floor; and also resided with his family on the premises. The other floors he let to several lodgers. The appellant, *Samuel Pitts*, rented the second and third floors at a weekly rent amounting to 26*l.* a year, and he claimed to have his name inserted in the list of voters in respect of *part (b)* of the house above mentioned. He had exclusive control over the rooms on these floors, and had the keys thereof in his possession. He had also a latch-key to the street-door, by which he let himself in at night. There were other lodgers in the house, to some of whom the landlord gave latch-keys; but he sometimes had young men as lodgers, and to these the landlord did not entrust latch-keys. The claimant's right of egress and ingress had never been interfered with by the landlord. There was another lock to the entrance door, but the claimant had never seen the key of it.

(a) This case originally stood first in the list of appeals, but when it came on for argument (*November 18th, 1844*), the Court remarked that the case stated *evidence* only, and not *facts*, and it was accordingly referred to the revising barrister to be restated.

(b) *Quære* whether this was a sufficient description of the claimant's qualification? See the observations of *Erle J.*, *post*, and also the next case.

When he found the street-door fastened, he entered the house through *Marshall's* shop.

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The point raised for the decision of the revising barrister was, whether the appellant had such an exclusive occupation of the second and third floors of the house, No. 17, *Catherine Street*, as to confer the franchise; and on that point the barrister decided in the negative.

*Cockburn* for the appellant. It is submitted that there was a sufficient occupation by the claimant of a "building," within the meaning of the twenty-seventh section of the Reform Act. The case falls within the principle of the decision in *Wright v. The Town-clerk of Stockport* (a), where the Court held that a room in a factory, being a separate portion thereof, of which the tenant had the exclusive use, and also the key of the door, was such a building as was contemplated by that section. The only point of distinction between the facts of that case and the present is, that here the landlord resided in the same house with the claimant; but if it be once conceded that a portion of a house may constitute a building, it can make no difference whether the landlord occupies a part of it or not. [*Erle J.* The appellant claimed to qualify in respect of *part of a house*. In the *Stockport Case* it was found as a fact that each tenant had the exclusive use of a *room*, being a distinct or separate portion of the factory.] No objection was taken to the claim on that ground.

*Merewether* appeared for the respondent, but was not called upon by the Court.

(a) *Ante*, p. 32.



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TINDAL C. J. It appears to me that this case is free from any doubt. The question here is, whether the appellant "occupied as owner or tenant," for these are the words of the statute; and that question does not depend upon the description of the premises occupied, but on the nature of the occupation. All that the landlord has done has been to give the claimant a limited enjoyment of a portion of the house which he did not himself occupy. I call it a limited enjoyment, because it is stated in the case that the claimant had no key to the street-door, or at least, that he had never seen one; and although he was not prevented, generally speaking, from letting himself in at night by means of a latch-key, it yet appears that the street-door was sometimes fastened, and that on those occasions he entered the house through the door of the shop, which was in the occupation of the landlord. He had therefore no exclusive occupation of the premises; he was merely an inmate or lodger.

The other Judges concurred.

Decision affirmed, with costs.

January 16.

SCORE, Appellant, and HUGGETT, Respondent.

A person having the separate and exclusive occupation of apartments in a house, of which apartments he has the key, and having also a separate key for his own use of the outer door, the land-

THIS was an appeal from the decision of *Denis Creagh Moylan*, Esquire, the revising barrister for the city of *Westminster*.

At the revision, *George Bedford* claimed to be inserted in the list of voters for the parish of *St. James, Westminster*, in respect of the occupation of *apartments* at

lord of the house not residing therein, nor occupying any part of it, is an occupier, as tenant, of a house, within the meaning of stat. 2 W. 4. c. 45. s. 27.

No. 7. *Leicester Street, Regent Street.* The apartments consisted of two rooms on the second floor, communicating with each other, for which he paid 20*l.* 16*s.* a year rent. These rooms were occupied for four years by *Bedford* for the purpose of dwelling, and *Bedford* had the use of the back kitchen and yard in common with other parties. The house consisted of four stories; the front kitchen on the basement was let to another party; the ground floor, first floor, and attics were each separately occupied by other parties. The access to the kitchen, and the first and other floors was by the common street-door of the house, a key of which was in the possession of each of the occupiers, who had each a key of the respective apartments in his own occupation, and the exclusive right of access thereto. The landlord, Mr. *Kemp*, did not reside in or occupy any part of the house.

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Upon these facts the point raised for the decision of the revising barrister was, whether the occupation of such two rooms by the claimant was sufficient to confer the elective franchise: and upon that point he decided in the affirmative.

*Merewether* for the appellant. It is submitted, in the first place, that the nature of *Bedford's* qualification was improperly described. He claimed in respect of the occupation of *apartments*. [*Erle J.* The revising barrister has stated one question for the opinion of the Court, and we have no other before us. (a)] Then, it is contended that *Wright v. The Town-clerk of Stockport* (b) does not govern this case. There each of the

(a) See *Simpson v. Wilkinson*, *antè*, p. 168.(b) *Antè*, p. 32.

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parties occupied a distinct portion of the building, but there was no separate occupation by *Bedford* in the present case.

*Cockburn*, for the respondent, was not called upon.

TINDAL C. J. I think this case cannot be distinguished from that of two families in one house, one taking the rooms on the left side of the staircase, the other taking the rooms on the right; and each having a key of the outer door, and the common use of the passage. The claimant had a distinct and separate occupation of his rooms, and the decision must be affirmed.

The other Judges concurred.

Decision affirmed with costs.

January 16.

TOMS, Appellant, and CUMING, Respondent.

A notice of objection under stat. 6 Vict. c. 18. s. 17., must be signed by the hand of the person objecting.

So also must be the stamped duplicate, when the notice is sent by post, under section 100.

UPON an appeal from the decision of *James Lancaster Lucena*, Esquire, the revising barrister for the borough of *Totnes*, the appellant objected to the name of *Samuel Angel* being retained on the list of persons entitled to vote in the election of members for the borough. The notice of objection had been signed by the objector himself, and a copy thereof had been signed with the name of the objector by one *Hannaford*, by his direction and in his presence, and both were addressed to *Angel*, at his place of abode, as described in the said list. The said notice and copy were exa-

mined by the objector, and were by him taken to the postmaster at *Totnes*, on the 28d of *August* 1844, and compared and stamped by the postmaster. The notice was retained at the post-office to be forwarded according to the act, and the copy was returned to the objector, by whom it was produced in Court. The notice would, in the ordinary course of post, have been delivered at *Angel's* place of abode as described in the said list, on or before the 25th day of *August*. It was objected, on the part of *Angel*, that the production of such stamped copy was not the production of a duplicate notice as required by stat. 6 *Vict.* c. 18. s. 100.; and the barrister, being of that opinion, retained the name of *Angel* on the list.

Twelve other cases were consolidated with the preceding.

*Kinglake* Serjt. for the appellant. It is submitted that the objection taken before the revising barrister, and allowed by him, ought to be overruled. The stamped copy of the notice of objection, though not signed by the objector's own hand, was signed by his direction and in his presence, and the notice sent by the post to *Angel* was actually signed by the objector. The party objected to, therefore, has been served with a proper notice of objection, and the question is, whether the stamped duplicate was not, under the circumstances, evidence of the delivery of the notice, within the meaning of the 100th section of stat. 6 *Vict.* c. 18. [*Tindal* C. J. The question is, whether there be a *duplicate* in the present case. *Cresswell* J. Must not the two papers, the notice and the duplicate, be identical?] It

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is sufficient to shew that the postmaster has examined the address and contents of the duplicate, and found them to correspond with those of the notice of objection. That is proved by the stamp, and there is nothing in the act which requires either in express words, or by implication, that the duplicate shall be signed by the objector himself. The *original* notice is required, by the seventeenth section of the act, to be signed by the person objecting, with whose handwriting the party objected to may be acquainted, but nobody sees the stamped duplicate, except the postmaster and the objector himself, until it is produced in Court, as evidence of the notice having been given to the person objected to at the place mentioned in such duplicate. When produced, the stamp dispenses with proof that the duplicate was signed by the objector. It is submitted, further, that the objector *has signed* the duplicate. He was present when his signature was attached to it, and the signing was made by his authority. *Qui facit per alium, facit per se.* In *Schneider v. Norris* (a), it was held that a bill of parcels, in which the name of the vendor was printed, and that of the vendee written by the vendor, was a sufficient memorandum of the contract, within the Statute of Frauds, to charge the vendor. [*Tindal* C. J. That case arose upon the seventeenth section of the statute, which requires that the memorandum should be signed "by the parties to be charged, or their agents." In the seventh section the language of the statute is different; it speaks only of some writing signed "by the party." *Cresswell* J. referred to *Hyde v. Johnson* (b).]

(a) 2 M. &amp; S. 286.

(b) 2 Bing. N. C. 776.

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*Cockburn*, for the respondent. The main question in the case turns upon the second point which has been raised, namely, whether an authorised signature is a sufficient signing, within the meaning of the Registration of Voters Act, ss. 17 and 100. It is submitted that the production of a copy of the notice of objection does not satisfy the term "duplicate," used in the 100th section. The documents therein specified, the notice of objection and the duplicate, were intended to be duplicate originals. Under the forty-seventh section of the Reform Act, which is now repealed, it was merely required that the person objecting should give, or cause to be given, a notice in writing according to a form contained in the schedule (I), and that form, No. 5, ended thus "(signed) *A. B.* of [*place of abode*]." Probably a signature by a duly authorised agent would have been sufficient under that statute, but something more is necessary under stat. 6 *Vict. c.* 18. s. 17. That section requires that "every notice of objection shall be signed by the person objecting;" as in the 9 *G. 4. c.* 14. s. 1., an acknowledgment in writing must be signed "by the party chargeable thereby." In *Hyde v. Johnson (a)*, it was decided that a letter written by the defendant's wife to the plaintiff in her husband's name, and at his request, and afterwards sent by him to the plaintiff, was not a sufficient acknowledgment of a debt, within the meaning of the latter statute. Where, therefore, a statute requires a signature by a party, and makes no mention of an agent, a signature by an agent will not suffice.

*Kinglake* Serjt. replied, and cited *Kine v. Beaumont. (b)*

(a) 2 *Bing. N. C.* 776.(b) 3 *B. & B.* 288.

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TINDAL C. J. It appears to me that the revising barrister was right in the conclusion at which he arrived, and that the objector has not brought himself within the meaning of the words found in the 100th section of the stat. 6 *Vict. c. 18*. The first question is, whether the original notice of objection should be signed by the objector himself. Now, the seventeenth section of the statute begins by giving a reference to the form of the notice of objection in the schedule (B), and concludes by saying, "And every notice of objection shall be signed by the person objecting." The natural meaning of these words is, that there shall be a personal signature by the objector, and there is great reason and good sense in such a provision, for if a man were at liberty to get another to sign for him, great difficulty would arise in recovering the costs allowed in cases of frivolous objections. The objector might apply for that purpose to some shuffling person, who would be likely to keep out of the way, and there would be no remedy whatever for the vexation and inconvenience which might ensue. Then, when we come to look at the case of *Hyde v. Johnson (a)*, we find it has been already decided by this Court, that a signature by an agent is not sufficient, when the plain words of a statute require a signature by the party himself. Both upon principle and authority, therefore, it appears to me that the original notice must be signed by the person objecting. Then, admitting that the original notice must be signed by the party who objects, it seems clear that the requisites of the 100th section have not been complied with. That section provides, that "whenever any person shall be desirous of sending any such notice of objection by the post, *he shall deliver the same, duly*

(a) 2 *Bing. N. C.* 776.

*directed, open and in duplicate, to the postmaster," treating the documents, therefore, apparently, as if each of them were originals; and then the clause goes on to say, a little lower down, "and the postmaster shall compare the said notice and the duplicate, and, on being satisfied that they are alike in their address and in their contents, shall forward one of them to its address by the post, and shall return the other to the party bringing the same, duly stamped with the stamp of the said post-office;" leaving it perfectly open to the postmaster to determine which one he shall send by the post. It is clear, therefore, that the duplicate and the notice must in their very nature be originals, as in the case of bills of exchange which are drawn in duplicate. One of the documents in this case was a notice, but the other, the effect of which is now in question, was no notice at all.*

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MAULE J. I am of the same opinion. In the first place, that the signature required by the seventeenth section of the stat. 6 *Vict. c. 18.* is a signature by the hand of the party objecting, is, I think, deducible both from the words of that section and from the object and intention of the statute. The form prescribed by section 17. shews that the name and place of abode of the objector are to be at the bottom of the notice; and the section itself says that "the notice of objection shall be signed by the person objecting." That, I apprehend, does not mean some one different from the objector, but the objector himself. The provision that the notice shall be signed by the party objecting, requires something more than giving the true name of the objector at the foot of the notice. Then, if the intention of the



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statute is considered, the reason for such a provision is self-apparent. Cases would otherwise frequently happen in which a great number of notices of objection might be sent by post, and all the persons so objected to would be bound to attend the Court and defend their votes, but would find nobody to support the objections. Then when they came to look for the objector, it might turn out that the party whose name was at the bottom of the notice never authorised it to be placed there. It was the object of the act to prevent such occurrences, and, therefore, the notice of objection must be signed by the hand of the person objecting. Then comes the question, whether the duplicate must be similarly signed. I apprehend that a "duplicate" means a document which is the same as another in all essential particulars. It has the same operation as the writing of which it is the duplicate. In that point of view this case is distinguishable from *Kine v. Beaumont* (a), where the copy of an original letter (taken at the time it was written), giving notice of the dishonour of a bill, was held to be admissible in evidence, without notice to produce the original letter. The stamped notice produced was an examined copy, not a duplicate, and therefore I think it was not evidence within the meaning of stat. 6 *Vict. c. 18. s. 100.*

CRESSWELL J. It appears to me that the effect of the seventeenth section is, that the party objecting shall give a notice of objection, with his name subscribed to it, which name shall be subscribed by himself. The object of the hundredth section was to relieve the party

(a) 3 *B. & B.* 288.

objecting from the necessity of proving service of the notice, by shewing that he had sent such a notice by post. That is provided for by the regulations made for comparing, stamping, and producing before the barrister a *duplicate*, and from that it must have been meant that the writing produced should be identical with that which was sent by post. Then if the writing produced was not signed by the objector himself, it was not identical.

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ERLE J. Particular care seems to have been taken in the statute to express the intention of the legislature that the signature to a notice of objection shall be in the handwriting of the objector. That appears from the terms used in the seventh, as well as in the seventeenth section. I also think that the word "duplicate," which is employed in the hundredth section, means a duplicate original.

Decision affirmed.

COOPER, Appellant, and HARRIS, Respondent.

January 16.

(AUSTIN's Case.)

AT a Court held before *Michael Prendergast, Esq.*, the barrister appointed to revise the list of voters for the borough of *Cambridge*, *Charles Henry Cooper* objected to the name of *Samuel Austin* being retained on the list of voters for the parish of *Holy Trinity*. It

A person employed under the post-office, at any time within twelve calendar months of the last day of July, to carry letters and

receive the postage thereon, is not entitled to be registered.

When the respondent does not appear, although he has received due notice of the appellant's intention to prosecute the appeal, the Court will, nevertheless, require the appellant's case to be argued before they give judgment.

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appeared that *Austin* was, in *November*, 1843, appointed by the Postmaster-General to carry letters from *Cambridge* to *Waterbeach*, and to receive the postage due on the letters so carried ; that he made the declaration set out in the schedule annexed to the stat. 1 *Vict. c. 33.* ; and that he was employed in the business above mentioned for above three months, and resigned his office in *March* 1844. It was contended that by virtue of several statutes, and especially of the stat. 22 *G. 3. c. 41. s. 1.* and 6 *Vict. c. 18. s. 40.*, the name ought to be expunged from the list of voters ; but the barrister decided otherwise, and retained the name.

No counsel appeared for the respondent when the case was called on.

*F. Gunning*, for the appellant, submitted that he was entitled to the judgment of the Court. Due notice had been given to the respondent, under the sixty-fourth section of the stat. 6 *Vict. c. 18.*, of the appellant's intention to prosecute the appeal, and the sixtieth section provided that appeals should be heard and determined according to the ordinary rules and practice of the Court with respect to special cases.

TINDAL C. J. I think we must hear the appellant before we can give judgment in his favour ; the appeal might turn out to be so weak a case that the respondent might not think it worth while to appear by counsel in support of the barrister's decision.

*Gunning* for the appellant. On the 31st day of *July* last, *Austin* was incapable of voting, and therefore he was not entitled to be on the register. The stat. 22 *G. 3.*

c. 41. s. 1. enacts that "No postmaster, postmaster-general, or his or their deputy or deputies, or any person employed by or under him or them in receiving, collecting, or managing the revenue of the post-office, or any part thereof, &c., shall be capable of giving his vote for the election of any knight of the shire, commissioner, citizen, burgess, or baron, &c.; and if any person hereby made incapable of voting as aforesaid shall nevertheless presume to give his vote during the time he shall hold, or within twelve calendar months after he shall cease to hold or execute any of the offices aforesaid, such votes so given shall be held null and void to all intents and purposes whatsoever, and every person so offending shall forfeit the sum of 100*l*." The party objected to clearly comes within the disqualifying words of this act of parliament. Then comes the stat. 6 *Vict. c.* 18. s. 40., by which it is provided that in case it shall be proved that any person, who has been duly objected to, was on the last day of *July* incapacitated by any law or statute from *voting*, the barrister shall expunge his name from the list.

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TINDAL C. J. We all agree that the decision is wrong.

Decision reversed.

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January 20.

JEFFREY, Appellant, and KITCHENER, Respondent.

To entitle a person to vote as an inhabitant householder, potwaller, or scot and lot voter, under stat. 2 W. 4. c. 45. s. 33., he must retain the identical qualification which he had when the Reform Act passed.

Where, therefore, a person claimed to vote for the borough of *Northampton*, as a six months' inhabitant householder, and it appeared that he had a right to vote as such on the 7th of *June* 1832, but that in *October* 1832, he ceased to reside at *Northampton*, and went to reside at *Bedford*, where he remained for fourteen weeks:

*Held*, that there must be a continuous qualification, and that as the claimant had once ceased to reside, and thereby lost his right to vote, he could not acquire a new

THIS was a consolidated appeal from the decision of *John Mellor*, Esq., the revising barrister for the borough of *Northampton*, by whom the following case was stated for the opinion of the Court:—

*John Jeffrey* duly objected to the name of *William Kitchener*, which appeared on the list of persons (not being freemen) entitled to vote for the said borough in respect of any right other than those conferred by an act passed 2 W. 4., entitled “An Act to amend the representation of the people in *England* and *Wales*,” for the parish of *All Saints*, as follows:—

Kitchener, William	Gregory Street	Six months' inhabitant householder	Gregory Street.
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Previously to the passing of the Reform Act, every person who had been an inhabitant householder within the borough of *Northampton* for six calendar months next before the day of election, and who had not received parochial relief or other alms for the space of twelve calendar months then last past, was entitled to vote in such election. *William Kitchener*, at the time of the passing of the Reform Act, had a right to vote as an inhabitant householder of the said borough, and has ever since, with the exception hereinafter mentioned, been an inhabitant householder in that borough. He was duly registered in the first registration under the

qualification by returning to *Northampton*, and becoming again an inhabitant householder.

provisions of the above-mentioned act, and has never since been omitted for two successive years, unless in consequence of his having received parochial relief. In the month of *October* 1832, he and his family ceased to reside at *Northampton*, and went to reside at *Bedford*, where he remained for fourteen weeks, and then came back to *Northampton*, and immediately became an inhabitant householder, and has so remained up to the present time. He has in every year since the passing of the Reform Act been an inhabitant householder duly qualified according to the usages and customs of the borough of *Northampton*, on the last day of *July* in each year.

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It was objected that, by reason of his having ceased to be an inhabitant householder for fourteen weeks as above mentioned, he was no longer entitled to retain the reserved right of voting as an inhabitant householder. The revising barrister decided against the objection, being of opinion, that inasmuch as his absence from *Northampton* occurred during a period which was not necessary to qualify him as an inhabitant householder in any year, that is to say, between the months of *July* and *February*, he came within the saving of the thirty-third section of the Reform Act, and accordingly retained his name on the list of voters for the parish of *All Saints*.

*Humfrey* for the appellant. The party objected to ceased to be an inhabitant householder of the borough of *Northampton* in *October* 1832, and if an election had taken place immediately after his return to *Northampton*, he could not have voted as an inhabitant householder, because he would not have resided there for six calendar

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months next before the day of election. Having, therefore, once lost his qualification, he could not regain it. It was the intention of the legislature, when they passed the Reform Act, to abolish as far as was possible the different rights of voting which then existed in various boroughs, and to establish one uniform franchise throughout the kingdom; but certain rights were reserved by the thirty-third section of that statute. That section provides "that every person now having a right to vote in the election for any city or borough (except those enumerated in the said schedule (A)) in virtue of any other qualification than as a burgess or freeman, or as a freeman and liveryman, or, in the case of a city or town being a county of itself, as a freeholder or burgage tenant, as hereinbefore mentioned, shall *retain such right of voting so long as he shall be qualified as an elector according to the usages and customs of such city or borough, or any law now in force*, and such person shall be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough, if duly registered according to the provisions hereinafter contained; but that no such person shall be so registered in any year unless he shall, on the last day of *July* in such year, be qualified as such elector in such manner as would entitle him then to vote if such day were the day of election and this act had not been passed." The clause then introduces a restriction in respect of residence, and concludes with a proviso "that every such person shall for ever cease to enjoy such right of voting for any such city or borough as aforesaid, if his name shall have been omitted for two successive years from the register of such voters for such city or borough hereinafter directed to be made,

unless he shall have been so omitted in consequence of his having received parochial relief within twelve calendar months next previous to the last day of *July* in any year, or in consequence of his absence on the naval or military service of his majesty." In all cases, therefore, where a person has once ceased to be an inhabitant householder, the right of voting as such is lost for ever, because he cannot be said to *retain* the qualification which he had at the time when the Reform Act passed. He cannot be remitted to his former right, and, therefore, it is submitted that the barrister was wrong in his decision.

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*Waddington*, for the respondent. The object of the thirty-third section of the stat. 2 *W.* 4. c. 45. was to reserve a *personal privilege* to such parties as enjoyed certain rights of voting at the time the Reform Act passed, namely, to inhabitant householders, scot and lot voters, and potwallers. The respondent, therefore, having a personal privilege reserved to him, his right of voting as an inhabitant householder would still continue, if, according to the custom which prevailed in the borough of *Northampton* before the Reform Act passed, he might have regained the right which he had lost. [*Erle J.* The words of the act are, "Every person shall retain such right of voting *so long as* he shall be qualified as an elector according to the usages and customs of such city or borough."] Those words do not mean that a person should enjoy his right of voting merely so long as he retained the identical qualification which he had when the Reform Act passed. If that had been the intention of the statute, the words introduced into the section would have been, "Every person



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shall retain *such qualification*" instead of "such *right of voting*." The section does not import that there must be a continuity of qualification. All that it requires is that the party who is to be registered on the last day of *July* shall be qualified, according to the usages and customs of the borough, in such manner as would entitle him to vote if that day were the day of election, and the Reform Act had not been passed. It is found in the case that the respondent was so qualified. The omission of a party's name for two successive years from the register, which is to operate as a forfeiture of the right, must mean an omission owing to a *want of qualification*, because it is expressly provided that he shall not lose his right, if his name shall have been omitted in consequence of the receipt of parochial relief, or of his absence on naval or military service. The seventy-eighth section of the stat. 6 *Vict. c. 18.* seems to strengthen that view of the case, as it provides that the party is to lose his reserved right, if his name has been omitted from the register for *two successive years in respect of such qualification*, though it has been inserted in respect of some qualification of a different nature. [*Cresswell J.* That is a declaratory clause. *Tindal C. J.* It certainly does not assist your argument, since it would not be enough that the party should be in the list; his name must appear there in respect of the specific qualification.] It serves to shew that the legislature did not consider that the omission of the name from the register for *a year* should disfranchise the voter. Upon the whole, therefore, it is submitted that the barrister was right in retaining the name.

*Humfrey*, in reply, was stopped by the Court.

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TINDAL C. J. It is impossible to read the thirty-third section of the stat. 2 *W.* 4. c. 45. without perceiving that the intention of the legislature was that, after the passing of that statute, there should be but one general right of voting in cities and boroughs, namely, that which is popularly called the 10*l.* householder right; but it was thought extremely hard, as it would have been, that persons who were in the possession of other rights of voting in respect of other qualifications should at once be deprived of them by the general and sweeping words used in the first part of the clause. There was, therefore, this proviso introduced, that every person then having a right to vote in virtue of any other qualification than as a burgess or freeman, &c., should retain such right of voting so long as he should be qualified as an elector according to the usages and customs of the city or borough, or any law then in force. The qualification here set up is on the part of a person who was qualified to vote as an inhabitant householder of the borough of *Northampton*, on the 7th of *June* 1832, the day on which the Reform Act received the royal assent; and the question is, whether he has retained that right. It appears to me that the proviso in question must be interpreted as if the act had said "he shall retain the right of voting so long as he is an inhabitant householder of the borough of *Northampton*." On the part of the claimant it is contended that this is too stringent an interpretation, and that the clause ought to be read as if it had contained these words, "he shall retain the right of voting so long as he shall continue to be an inhabitant householder; or if, having ceased to be an inhabitant householder, he shall return and reside in the borough again." It seems to

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me, however, that this construction of the clause would not only reserve to the party the right which he had at the time of the passing of the act, but would, in effect, give him the right of acquiring a *new* qualification in respect of a new residence. Suppose the Reform Act had never passed, and a person qualified to vote as an inhabitant householder had ceased to reside in the borough, as the respondent has done, it could not be contended that, if he came back again to the borough and took a new house, he would, at the end of six months' residence, be entitled to vote in respect of his old qualification. The necessity of residence in the borough for six months, before he could be duly qualified to vote, shews that it is not his old qualification; and if it is not his old qualification, it must be a new one. I cannot understand what object would be gained by allowing a party, under such circumstances, to acquire a right which he has voluntarily abandoned. The words of the proviso are plain enough, and I do not see that the subsequent negative portions of the clause have any bearing on the question, as they merely say that, if any "such person" applies to be put on the register, such and such conditions must be observed before his name can be inserted in the list. The question, therefore, comes round again, who is "such person" described in the former part of the section, and it seems to me that by these words the respondent's qualification to vote as an inhabitant householder was limited to the actual qualification which he possessed at the time of the passing of the act. I think, therefore, that the decision of the revising barrister was wrong.

MAULE J. I am of the same opinion. I conceive the legislature meant to exempt from the hardship of disfranchisement such persons as were qualified to vote at the time of the passing of the act, and who did not lose their qualifications by their own free will afterwards; but that persons who thought fit to give up their qualifications, by ceasing to be inhabitant householders, when that was the necessary qualification, as in the present instance, and also those who intimated that they did not care about the qualification, by allowing themselves, although qualified, to be off the register for two successive years, should not come within the exemption. The terms of the proviso are very clear, that such persons shall retain the right of voting *so long as* they shall be qualified, &c. The words "so long as" being words of time, and importing continuity, certainly do not include a case where the continuity of the qualification has been interrupted. I think, therefore, that the vote ought to have been disallowed.

CRESSWELL J. I also think that the revising barrister ought to have disallowed this vote. The words of the statute are very clear, and declare that the party shall retain his right to vote, so long as he shall be qualified according to the usages of the borough. Now, according to the usages of the borough of *Northampton*, the respondent ceased to be qualified when he went away to reside at *Bedford*, and if an election had taken place at any time within six months after his return to *Northampton*, he could not have voted at such election as an inhabitant householder. Having, therefore, lost his old right of voting, can he acquire a new one? It seems to me that the statute never intended that he

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should. It is, however, contended that this construction is inconsistent with a subsequent portion of the clause, which provides that a party shall not be registered unless he shall on the last day of *July* be qualified as such elector, in such manner as would entitle him then to vote, if such day were the day of election. It appears to me that this provision, so far from being inconsistent with the meaning attached by the Court to the former part of the clause, confirms their construction of it, for a person might be qualified as an elector, yet not in *such* manner as would entitle him to vote on the last day of *July*. I think that the statute intended to reserve to parties the same qualification which they possessed at the time of the passing of the act, and that the claimant, not having retained the qualification which he then had, never could acquire it again.

ERLE J. The general object of the stat. 2 *W.* 4. c. 45. is, that no person shall have a right to vote for a city or borough except 10 $\frac{1}{2}$ . householders; but upon this general rule an exception is engrafted by the thirty-third section, which, after recognising certain other rights of voting, provides that such persons as were then qualified to vote in virtue of any other qualification, should retain such right of voting so long as they should be qualified as electors according to the usages and customs of such city or borough. It appears to me, therefore, that the act of parliament contemplated the reservation of other existing rights of voting, but that, with respect to those which are not distinctly specified in the proviso, it was intended that the parties should retain them only so long as they should be qualified. That seems to me to imply a continuity of the qualification. The words

which follow in the clause, appear to be an exception upon an exception, confining the right to those who are duly registered; and the proviso at the end of the clause expressly declares that the omission of the party's name from the register for two successive years, except for the causes therein mentioned, shall operate as an extinction of the right altogether. I think, therefore, that we should give no effect to this clause of the act of parliament, if we were to hold that a party might regain the right which he had once lost.

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Decision reversed. (a)

(a) The following consolidated appeal from the decision of the same revising barrister was decided on the same day : —

STANTON, Appellant, and JEFFREY, Respondent.

THE facts of the case were the same as in *Jeffrey v. Kitchener*, with the exception that the party objected to, *James Adson*, left *Northampton* at Christmas 1842, and went to reside elsewhere for nine months, having during all that time ceased to occupy any house within the borough. The revising barrister expunged the name of the voter.

*Waddington* for the appellant.

*Hunfrey* for the respondent.

No argument was offered, the case being governed by the judgment of the Court in *Jeffrey v. Kitchener*.

Decision affirmed.

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January 20.

## DYER, Appellant, and GOUGH, Respondent.

A collector of the window-tax is entitled to vote; for, notwithstanding the stat. 43 G. 3. c. 99., he is still to be considered as appointed by the Land Tax Commissioners, and not by the Commissioners of Assessed Taxes, and is therefore within the exception created by the second section of stat. 22 G. 3. c. 41.

**T**HIS was a consolidated appeal from the decision of *Frederick William Slade*, Esquire, the barrister appointed to revise the list of voters for the borough of *Westbury*, who stated the following case: —

The name of *John Dyer* appeared upon the list of persons entitled to vote in the election of a member to serve in parliament for the borough of *Westbury*, in respect of property situate in the parish of *Westbury*. A notice of objection was proved to have been duly served upon him and the overseers of *Westbury*, against his right to have his name retained upon the list of voters for the said borough; and, upon the said *John Dyer* appearing, and being called upon to prove himself entitled to have his name retained upon the list of voters for the said borough, it was proved that the said *John Dyer* was, at the time of making out the said list of voters, and still is, a person employed in collecting the duties on windows, and that he was appointed such collector by a warrant and appointment, under the hands and seals of two of the commissioners for executing the several acts of parliament relating to the duties of assessed taxes. It was admitted that the two commissioners making the said appointment were also commissioners of the land tax; but this fact did not appear in any way recited or otherwise upon the said appointment.

The revising barrister was of opinion that the said *John Dyer* was not entitled, on the last day of *July*,

1844, to have had his name inserted in the list of voters for the said borough of *Westbury*, inasmuch as it appeared to the said barrister that the said *John Dyer* was, at the time of making out the said list of voters, and still is, a person employed in collecting the duties on windows, within the meaning of the 22 G. 3. c. 41. s. 1., and expunged his name accordingly.

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*Shce* Serjt. (*R. Gurney* with him) for the appellant. It is submitted that *Dyer's* name ought to have been retained on the list of voters. The stat. 22 G. 3. c. 41. s. 1. enumerates, amongst other persons thereby declared to be incapable of voting, "any surveyor, collector, comptroller, inspector, officer, or other person, employed in collecting, managing, or receiving the duties on windows or houses." The appellant, therefore, would be disqualified, if it were not for the exception contained in section 2., by which it is provided, that nothing in that act contained "shall extend, or be construed to extend, to any commissioner of the land tax, or any person acting under the appointment of such commissioners of the land tax, for the purpose of assessing, levying, collecting, receiving, or managing the land tax, or any other rates or duties already granted or imposed, or which shall hereafter be granted or imposed, by authority of parliament." The plain meaning of the act, therefore, is, that any person receiving an appointment from the land tax commissioners, whether for the purpose of collecting the land tax, or any other rates or duties, shall be exempted from the disqualifying enactments of the first section. By the stat. 20 G. 2. c. 3. s. 6., all persons appointed to be commissioners of the land tax by the stat. 20 G. 2. c. 2., or any other act



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then in force, or any future act, are appointed commissioners for the taxes on houses and windows. That act was still in force when the stat. 22 G. 3. c. 41. was passed, and therefore the second section of the latter statute must have had in view parties who had been appointed to collect the duties on windows by the land tax commissioners. *Barringer's Case* (a), *Staple's Case*. (b) [Tindal C. J. To whom, then, does the first section of stat. 22 G. 3. c. 41. apply?] To the *surveyors* and *inspectors* of assessed taxes, appointed and paid by the Lords of the Treasury, under the powers given by sections 30. and 43. of stat. 20 G. 2. c. 3. [Erle J. It appears that under that act two classes of officers are appointed; one, where the appointment is made *in invitum*, under section 6. by the commissioners of land tax; the other, deriving their authority from the Lords of the Treasury.] The latter class of officers, being appointed by the Crown, would be under the direct influence of the Government, and may, therefore, fairly be inferred to be within the purview of the first section of stat. 22 G. 3. c. 41., which was passed for better securing the freedom of elections of members to serve in parliament. But the mode of appointment in the present case, namely, by the land tax commissioners, entirely excludes the mischief contemplated. By stat. 38 G. 3. c. 48. ss. 1. and 2. a property qualification was required for the office of commissioner of the land tax, and by a subsequent statute, 43 G. 3. c. 99. s. 4., all commissioners of taxes are required to have the same qualification as the land tax commissioners. The large words in the proviso contained in the second section of stat. 22 G. 3. c. 41. clearly apply in a case

(a) 3 Lud. 541.

(b) 2 Peck. 116.

like the present. [*Cresswell J.* The collectors, although receiving their appointment from the land tax commissioners, appear to be selected by the persons who pay the tax. By section 9. of the stat. 43 G. 3. c. 99., the commissioners are to appoint assessors from the inhabitants of the district, who are then to return the names of persons to be collectors, and by section 12., the commissioners are to appoint collectors out of the parties so returned.]

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*Cockburn* (*Kinglake Serjt.* with him) for the respondent. The decision of the revising barrister was right. The disqualifying clause of the stat. 22 G. 3. c. 41. makes no distinction between collectors of the window tax when appointed by the Crown, and those appointed by the inhabitants of the district. Exemption is claimed for the appellant under sect. 2., and if persons in his situation were appointed by commissioners of the land tax, they certainly would not be disqualified. But, by the stat. 43 G. 3. c. 99., the appointment of these parties was taken out of the hands of the land tax commissioners altogether. A new set of commissioners were nominated, who were required to have the same property qualification as the land tax commissioners, but were not required to be the same persons. The management of the assessed taxes was placed under the controul of these new commissioners, and then, by a later act of the same session, stat. 43 G. 3. c. 161., which imposed new duties on windows (*inter alia*), it was enacted that all the duties thereby granted should be levied under the provisions of the former act, stat. 43 G. 3. c. 99. The sixth section of the stat. 43 G. 3. c. 161. then makes the commissioners of land tax *ex*

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*officio* commissioners under that act, provided they are duly qualified and have taken certain oaths. A party, therefore, may be a land tax commissioner, but he cannot be a commissioner of assessed taxes unless he has qualified to act as such. Taking the statement contained in the case drawn up by the revising barrister, it is submitted that the warrant and appointment there recited was made by two gentlemen in their capacity of commissioners of assessed taxes, and not as commissioners of the land tax. The distinction between the two sets of commissioners was pointed out by *Wilde Serjt.*, *arguendo*, in *Collins v. Gwynne*. (a)

*Shee Serjt.* was not called upon to reply.

TINDAL C. J. The question in this case arises under the stat. 22 G. 3. c. 41.; and if the first section had been the only section in the act, there could have been no doubt whatever that the appellant would have been disqualified, because he would have been a person employed as a collector of the window duties, which is one description of the disqualified persons enumerated by that section; but then comes the second section, which professes to create an exception in favour of certain persons, and to take them out of the range of the general disqualification; and the question is, whether the appellant brings himself within that exception. It appears to me that he does; because after the very general words used in the first section, the second section says that "nothing in the act contained shall extend or be construed to extend to any person or persons by reason of his or their being commissioners of the land tax, or acting under the appointment of the

(a) 7 Bing. 425.

commissioners of the land tax, for the purpose of assessing, levying, collecting, receiving, or managing the land tax." Now let us pause for a moment there. If the section had stopped at that point, the appellant would not have been excepted from the general terms of the first section, unless he had been employed by the land tax commissioners merely for the purpose of collecting the land tax; but the section goes on to say, "or any other rates or duties already granted or imposed, or which shall be hereafter granted or imposed by authority of parliament." Then, on looking into the acts of parliament which impose other duties, we find that the collection and management of the assessed taxes have been placed under the controul of the land tax commissioners. The case having stated, therefore, that the appointment of the appellant was made under the hands and seals of two of the commissioners of the land tax, although for the purpose of collecting duties of a different nature to those which they were originally intended to collect and manage, it appears to me that the disqualification never existed at all. If we were to hold otherwise, we should put a very strained construction on the second section, in order to disqualify the voter, which we never ought to do.

MAULE J. The voter was a person who, at common law, would have had a right to vote, but it is said that his right to vote is taken away by the stat. 22 G. 3. c. 41. s. 1. It appears to me, however, that the appellant is not one of that description of persons to whom the disfranchising words of the first section apply. Then, is he disfranchised by any subsequent act? The stat. 43 G. 3. c. 99. says that new commissioners shall be appointed

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for the management of the affairs of taxes, but it does not make any provision for their appointment; and for a very good reason, namely, because before that act came into operation, another act was about to pass, and which did pass a few days afterwards, removing the difficulty which would have ensued if cap. 99. had passed without cap. 161. That latter act says, in effect, that the commissioners who are to act under the former statute are to be commissioners of the land tax. Upon the whole state of legislation on this subject, it appears that persons in the situation of the appellant were not disfranchised at the time of the passing of the stat. 22 G. 3. c. 41. They could not be appointed at that time by any body but the commissioners of the land tax; nor could they have been so appointed at any time since, because from that time downwards, and up to the present time continuously, the commissioners of land tax have been the commissioners for the affairs of assessed taxes. It cannot be denied, therefore, that, in some sense, the words of the second section of the stat. 22 G. 3. c. 41. are capable of comprehending the appellant, and, if so, they should be understood in the largest sense of which they are capable, if there be nothing to shew that they were used with a narrower signification. I think it clear, therefore, that the vote ought to have been allowed.

CRESSWELL J. I am of the same opinion. The second section of the stat. 22 G. 3. c. 41. clearly saved the vote of persons in the situation of the present appellant. That section refers to "other rates or duties *already* granted or imposed," and it appears, therefore, that it was in the contemplation of the legislature at that time that the commissioners of land tax would have

power to collect other duties besides the land tax. The subsequent acts enlarged their powers, but did not affect their acts as commissioners of the land tax.

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ERLE J. At the time of the passing of the stat. 22 G. 3. c. 41., there were two sets of officers employed in collecting the revenue, one class deriving their appointment from the people, the other, salaried officers appointed by the Crown, and supposed to be incapable of giving an impartial vote. The disfranchising enactments of the first clause would, therefore, apply to the officers appointed by the Crown, while the saving in the second section would relieve from the penalty of disfranchisement persons elected by the tax-paying inhabitants of the country. So the matter stood, perfectly clear from doubt, until the stat. 43 G. 3. c. 99. and c. 161. passed; and the effect of these two acts, taken together, seems to be, that the collectors of the window duties derive their appointment *immediately* from the commissioners for assessed taxes, but *mediately* from the commissioners of land tax. It appears to me that there are not two distinct bodies of commissioners, as has been argued, but that the land tax commissioners act in the capacity of commissioners of assessed taxes, in the discharge of the additional functions which have been imposed upon them. With respect to *Baxter v. The Overseers of Doncaster* (a), which will be decided by the

(a) BAXTER, Appellant, and The Overseers of DONCASTER, Respondents.

THIS was an appeal from the decision of *Percival A. Pickering, Esq.*, the revising barrister for the West Riding of Yorkshire. Assessors, as well as collectors of the window-tax, have a right to vote, being appointed by Land Tax Commissioners, within the meaning of stat. 22 G. 3. c. 41. s. 2., and stat. 43 G. 3. c. 99. and c. 161.

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judgment given in the present case, it is to be observed, that the office of collector is stated to be compulsory, when the appointment is made by the commissioners of

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At the revision four persons, namely, *Joseph Marshall, William Workman, John Nicholson*, and *William Gill*, were objected to, upon the ground that two of them actually were, and two of them had been up to the 5th of *April, 1844*, collectors or assessors of the assessed taxes (*Marshall* and *Workman* being collectors, and *Nicholson* and *Gill* assessors of those taxes), and that all of them were consequently disqualified on the 31st day of *July, 1844*. The case contained the following statement:—

“It was shewn in evidence, that the respective appointments were made by the local commissioners of assessed taxes, the names of two persons in every township being annually returned to the said commissioners, who compel the parties so returned to take the office upon them.

“The local commissioners of assessed taxes are selected from the body of the land tax commissioners, and upon their appointment to act as assessed tax commissioners, they take an oath of office as assessed tax commissioners, and whilst acting as commissioners of assessed taxes they still retain their character of commissioners of the land tax.”

The revising barrister decided against the objection, and retained the names of the parties on the list of voters.

The case was argued (in *Michaelmas* term, *November 21st*) by

*R. C. Hildyard* for the appellant, and

*Sir G. Lewin* for the respondents.

The Court said, that as there were other cases on the same point, they would defer their judgment; and now

*Per Curiam.*

Decision affirmed.

The following appeal was also decided on the same day:—

COOPER, Appellant, and HARRIS, Respondent.  
 (CLENISHAW's Case.)

A clerk to a receiving inspector of taxes appointed and paid by the

Treasury under stat. 1 & 2 W. 4. c. 18. s. 2., was in the habit of assisting the inspector in the receipt of the window duties, &c. The clerk took the oath for collectors or officers for receipt under the Income Tax Act, but he had not been recognised in any other way as a public officer, and his salary was paid, and he was appointed and was liable to be discharged by the inspector. Held, that he was not disqualified by the stat. 22 G. 3. c. 41. s. 1.

This case came before the Court upon an appeal from the decision of *Michael Prendergast, Esq.*, the revising barrister for the borough of *Cambridge*.

land tax, which would be an additional reason, if any were wanting, for coming to the conclusion that persons thus situated were never intended to be disfranchised.

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The case stated, that by stat. 1 & 2 W. 4. c. 18. s. 2., it was enacted, "That in lieu and in the place of the Receivers General to be discontinued under this act, it shall and may be lawful to and for the said commissioners of his Majesty's treasury for the time being to nominate and appoint from time to time such of the persons for the time being appointed to execute the offices and duties of inspectors of taxes to be officers or persons for the receipt of the land-tax, and of monies payable for the sale and redemption thereof, and the respective rates and duties of assessed taxes under the management of the commissioners for the affairs of taxes, within and for such counties, districts, and circuits of receipt, as the said commissioners of the treasury shall from time to time authorise or direct; and it shall also be lawful for the said last-named commissioners to grant annual allowances to such receiving inspectors as a remuneration for executing and performing the additional duties imposed on them by this act, and for the expence of a clerk, not exceeding on an average the sum of 100*l.* for such remuneration, and a like average sum of 100*l.* for such clerk."

*David Clenishaw*, the person whose vote was objected to, was clerk to a receiving inspector of taxes appointed under the above enactment. He was in the habit of assisting the receiving inspector in the receipt of the window duties and other taxes from the collectors. Before the passing of the stat. 5 & 6 Vict. c. 35. (the Income Tax Act) he had taken no oath of office; but after the passing of that act, he took the oath for collectors and officers for receipt given in schedule (F.) annexed to that act. It appeared that he had in no other way been recognised as a public officer; that his salary was fixed and paid, and that he was appointed, and was liable to be discharged, by the receiving inspector; and that sometimes the receiving inspector received the allowance for a clerk without employing any one at all in that capacity.

It was contended that *Clenishaw* was a person employed in collecting the duties on windows or houses, and therefore rendered incapable of voting by stat. 22 G. 3. c. 41. s. 1. The revising barrister was of a different opinion, and retained the name of *Clenishaw* on the list of voters.

*F. Gunning*, for the appellant (January 16.), contended that the party objected to came within both the words and the spirit of the disqualifying section of the stat. 22 G. 3. c. 41. *Clenishaw* was not only employed to collect the window duties, &c., but he received a salary for doing so, paid out of funds supplied by the Lords of the Treasury. He



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The fourth section of the stat. 22 G. 3. c. 41. expressly provided that the disqualifying enactments of the first section should not apply to persons who chose to resign their offices, thereby shewing that the legislature could not mean to take away the vote of a man who accepts an office only because he is forced to take it.

Decision reversed.

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was also a public officer, employed under the Income Tax Act. [*Erle J.* It appears from the case, that the party is appointed at the option of the receiving inspector of taxes, and may be dismissed at once.]

*Cur. ade. vult.*

The Court now intimated that the decision must be

Affirmed.

January 23. DANIEL, Appellant, and COULSTING, Respondent.

A building calculated for a dwelling-house, and which had been once used as such, was occupied by the tenant in possession partly for warehousing goods, and partly for a sale-room, some of the upstairs apartments being let off to be used as workshops. *Held*, that it was properly described in the list of voters as a "house," within stat. 2 W. 4. c. 45. s. 27.

AT a Court held before *John Tyrrell, Esq.*, the barrister appointed to revise the lists of voters for the city of *Bristol*, *James Daniel* objected to the name of *Henry Fargus* being retained upon the householders' list of voters in the parish of *St. Stephen*.

The voter's qualification, as stated upon the list, was "house." It appeared that *Fargus* rented a building, No. 4. *Clare Street*, consisting of apartments, once used as kitchens, shop, sitting-rooms, and bed-rooms, and which possessed the usual conveniences to fit it for a dwelling-house. It was, in fact, every way calculated for a dwelling-house, and had been used as such; but *Fargus* occupied the greater portion of the building himself, partly for warehousing goods, and partly for a sale-room, and some of the upstairs apartments not so occu-

pied, he let off to be used as workshops. No one resided upon the premises.

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The objection was, that the qualification on the list ought to have been "warehouse and shops." It was contended on the other side, that the qualification was properly described; but for the purpose of "more clearly and accurately defining the same," the barrister was requested to add to the word "house" the words, "now used as warehouse and shop." The barrister decided that the premises, No. 4. *Clare Street*, being to all intents and purposes a "house," though not now used as a dwelling-house, the word "house" was a sufficient description of the qualification; and he further decided, that if it should be necessary to make the proposed alteration, he had the power to do so, and he added to the qualification the words which had been suggested.

The cases of six other parties were consolidated with the principal case.

*Kinglake* Serjt. for the appellant. In the twenty-seventh section of the Reform Act the borough franchise is conferred in respect of the occupation of a "house, warehouse, counting-house, shop, or other building." The word "house" in that section must therefore mean "dwelling-house," which the building in question is not, but a "warehouse," and it should have been so described. The description of the qualification is intended to operate as a notice to all persons concerned, and the party on the list must stand or fall by that description. In *Elsmore v. The Inhabitants of St. Briavells* (a), a building intended for, and constructed

(a) 8 B. & C. 461.

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as, a dwelling-house, but which had not been completed or inhabited, and in which the owner had deposited straw and agricultural implements, was held not to be a house, within the meaning of the stat. 9 G. 1. c. 22. s. 7. [*Cresswell J.* It was conceded, in the argument in that case, that it was not a house within the meaning of that statute, because burglary could not have been committed in it.] In *Sweetman's Case (a)*, which was decided under the seventh section of the *Irish Reform Act*, and in which the notice of registry was out of a "counting-house and stores," *Crampton J.*, in delivering judgment, said, "The claimant who means to register out of a separate building must elect the term by which that building is to be designated, and so describe it in his notice." It is submitted, further, that the misdescription of the qualification was not one which the revising barrister had power to correct, under the stat. 6 *Vict.* c. 18. s. 40.

*Butt*, for the respondent, was not called upon.

TINDAL C. J. I think that the qualification of the party objected to was properly described. The question is, whether the building particularised in the case does or does not constitute a "house" within the meaning of the stat. 2 *W.* 4. c. 45. s. 27. That section confers the franchise, on certain conditions, on every male person who shall occupy, within any city or borough, as owner or tenant, "any house, warehouse, counting-house, shop, or other building." There is not a word in the act of parliament which requires that the "house"

(a) *Alcock's R.* C. 27.

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shall be a "dwelling-house;" all that is said is, that it shall be a house. Now I must say that it appears to me impossible to read the description of this building without seeing that it is, strictly and properly, a house. It was formerly used as a dwelling-house; it is divided into apartments, and with very little trouble it may be used as a dwelling-house again. It must have had four walls, a door, a roof to keep out the elements, and chimneys to make it habitable. It has, therefore, all that is necessary to make it a house, and in common parlance it would be a house. Is there any other word in the section under which it might be more properly described? If it had been described as a warehouse, the objection would be that part only of the whole was so used, the other part being occupied as a sale-room. Neither is it a counting-house or shop, nor would it fall within the description "other building," which is *nomen generalissimum*, including all those buildings which are not specifically enumerated. It seems to me, therefore, that the building in question is properly called a house, as it would throw infinite difficulty in the way of establishing a right to vote, if the claimant might be called upon to prove the precise manner in which his house is used. Besides, all that the act says is, that he shall *occupy*, not that he shall *dwell* in, a house. Suppose a party chose to let his house to a debating society, it would not cease to be a house on that account. The decision of the revising barrister must be affirmed, and with costs.

CRESSWELL J. (a) There is not the least pretence for the objection to the description of the party's quali-

(a) Maule J. was absent.

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fication. The stat. 2 W. 4. c. 45. s. 27. gives the right of voting in respect of the occupation of a "house, warehouse, counting-house, shop, or other building." Then, when the overseers make out the list of persons entitled to vote as occupiers, they are required to state therein the nature of each occupier's qualification. Here they have stated it to be a house. It is said that "house" means, in this act, "dwelling-house;" but I do not see any thing in the statute to support that position. In the case of *Elsmore v. The Inhabitants of St. Briavells (a)*, the question before the Court turned upon the meaning of the stat. 9 G. 1. c. 22., which did not create any new offence; and as the building in that case was not completed or inhabited, and therefore was not a house in respect of which burglary or arson could be committed, the Court held that it was not a house within the meaning of that statute. That decision, therefore, is no authority in the present case.

ERLE J. If any person who uses the *English* language in its ordinary meaning, were to see this building at No. 4. *Clare Street*, with its kitchens, bedrooms, and the usual conveniences necessary for a dwelling-house, he could not hesitate to describe it as a house. It is said that because it is not a "dwelling-house," it loses the meaning of a "house," but I am of a different opinion. If a man had to find out No. 4. *Clare Street, Bristol*, the term "house" would be much more likely to direct his inquiry, than if the building were described as a "warehouse" or "shop," or by any other designation.

Decision affirmed, with costs. (b)

(a) 8 B. & C. 461.

(b) See *Nunn v. Denton*, *antè*, p. 178.

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WANSEY, Appellant, and PERKINS, Respondent. *January 23.*

(QUIGLEY'S Case.)

**T**HIS was a consolidated appeal from the decision of *Thomas James Arnold, Esq.*, the barrister appointed to revise the lists of voters for the city of *London*.

*Robert Thomas Perkins*, who was on the list of free-men of *London* and liverymen of the Company of Patten Makers, entitled to vote in the election of members for the city of *London*, objected to the name of *Patrick Quigley* being retained in the list of persons entitled so to vote. The name of the said *Patrick Quigley* was in the list of persons entitled to vote, published by the overseers of the parish of *St. Anne* and *St. Agnes*, in the said city.

The notice of objection by the said *R. T. Perkins*, which had been duly served upon the said overseers, was as follows : —

“ To the overseers of the parish of *St. Anne* and *St. Agnes*, in the city of *London*.

“ I hereby give you notice, that I object to the name of *Patrick Quigley* being retained in the list of persons entitled to vote in the election of members for the city of *London*. Dated this 16th day of *August*, 1844.

(Signed)

“ *Robert Thomas Perkins*, No. 11. *Meredith Street, Clerkenwell*, on the list of voters for the Company of Patten Makers.”

The note at the foot of the form No. 10. Schedule (B), annexed to 6 *Vict. c. 18.*, applies only to cities or boroughs where the overseers are required to make out two lists of voters ; and the note does not apply at all to form No. 11.

Therefore, in *London*, where the overseers only make out the list of householders in their own parish, a notice of objection to the overseers need not specify the list to which the objection refers ; nor need the notice given to the party objected to.

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Case.)

And the notice of objection, which was duly served upon the said *P. Quigley*, was as follows: —

“ To Mr. *Patrick Quigley*, 6. *Four Dove Court*.

“ I hereby give you notice, that I object to your name being retained in the list of persons entitled to vote in the election of members for the city of London. Dated this 16th day of *August*, 1844.

(Signed)

“ *Robert Thomas Perkins*, No. 11.

*Meredith Street, Clerkenwell*, on

the list of voters for the Company of Patten Makers.”

It was objected on the behalf of the said *Patrick Quigley*, that the said notices of objection were insufficient, and that he was not called upon to prove that he was entitled to have his name inserted in the said list; and it was contended, that as in the city of *London* there were lists of freemen and liverymen as well as lists of parties entitled to vote in respect of a property qualification, and also that there were as many lists of such last-mentioned parties made out by the overseers as there were parishes in the said city, the notice of objection served upon the overseers should have specified the list to which the objection referred, pursuant to the note at the foot of the form No. 10. in the Schedule (B) annexed to the stat. 6 *Vict. c. 18.*; and that the notice served upon the said *P. Quigley* should in like manner have specified such list; as, although the said note was not in fact appended to the form No. 11. in the said Schedule (B), it must be considered as applicable thereto. On the other hand, it was contended on behalf of the said *R. T. Perkins* that the said note applied only to cities or boroughs where the overseers had to make out

more than one list or set of lists of voters; as, for example, where they had to make out lists of householders and of all other persons (except freemen) entitled to vote by virtue of any other right (under sect. 13. of the said statute); and as the lists of freemen and liverymen were made out by the clerks of the respective companies (under sect. 20. of the same), the overseers having nothing to do therewith, and as the notice was addressed to the overseers of the particular parish in which the property was situated, that they, the said overseers, could not have been misled by the notice in question: and, further, that there was no necessity to consider the said note as applicable to the form No. 11. in the said Schedule (B) which had been strictly followed.

The revising barrister decided that each of the said notices of objection was sufficient; being of opinion, also, that if he rejected the said notice of objection, and did not require the said *P. Quigley* to prove that he was entitled to have his name inserted in the said list of voters, and there had been an appeal from such decision, and the Court of Common Pleas had reversed such decision, it would have been too late to require the said *P. Quigley* to prove that he was so entitled; and if the Court had ordered the name of the said *P. Quigley* to be expunged from the said list, he would have had no opportunity to prove that he was so entitled. The revising barrister, therefore, required it to be proved that the said *P. Quigley* was entitled to have his name inserted in the said list of voters; and the same not having been proved to the satisfaction of the revising barrister, he expunged the name of the said *P. Quigley* from the list. If the Court of Common Pleas should

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be of opinion that either of the said notices of objection was insufficient, the name of the said *P. Quigley* was to be restored to the said list.

The case contained a further statement, reciting that *Perkins* also objected to four persons, whose names were retained by the barrister upon the list of voters; that in each of these four cases the validity of the notices of objection depended upon the same point of law as before stated; but it was proved that each of the four persons so objected to was entitled to have his name inserted in the list of voters; that it appeared to the barrister that the objections were groundless, and that he had made orders on *Perkins* for the payment of the costs of each of the parties; and it was ordered that the said orders for the payment of costs should be suspended and abide the event of the appeal, unless the Court of Common Pleas should otherwise direct. (a)

*M. D. Hill* (*Wordsworth* with him) for the appellant. In the first place, there can be no reason why the orders for the payment of costs should have been suspended. [*Erle J.* That is not the point reserved for our consideration. We have nothing to do with the matter at present.] Then it is submitted that both notices of objection are bad. The notice of objection sent to the party objected to, being of greater importance, may be considered first. No good ground can be shewn for conferring upon county voters greater privileges than are enjoyed by those who have the borough franchise; yet the form No. 5., Schedule (A), given by the stat. 6 *Vict. c. 18.*, makes it necessary to specify, where a

(a) See 6 *Vict. c. 18. s. 46.*

notice of objection is given to a county voter, the name of the *parish* list of voters to which the objection applies. (a) In the present case, the notice to the party gives no information of the kind. The respondent has copied the form given in Schedule (B) No. 11.(b), which runs thus: "I object to your name being retained on *the* list of persons entitled to vote," &c. What is the meaning of the words "*the* list?" There is in every parish a list of householders, and therefore there must be a great number of lists in the city of *London*. It appears from the Fire Act, 22 Car. 2. c. 11. s. 62, 63., that in the city of *London* there are no less than fifty-one parishes, for each of which a list of 10% occupiers must be made out; and there are also numerous companies of liverymen, the lists for which are required to be made out by the clerks of the respective

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(a) The form is as follows: —

*Notice of objection to be given to parties objected to by any person other than owners, and to the occupying tenant of the qualifying property.*

To Mr.                      of                      .

[*Here insert the name and place of abode of the person objected to as described in the list; and in the case of notice to the tenant of the qualifying property insert his name and place of abode as described in the list.*]

TAKE notice, That I object to your name [in the notice to the tenant, instead of the words "your name," insert the name of the person objected to] being retained in the [here insert the name of the parish] list of voters for the county of                      [or for the                      Riding, &c.]

Dated this                      day of                      one thousand eight hundred and                      .

(Signed) A. B. of [place of abode] on the register of voters for the parish of                      .

(b) 6 Vict. c. 18. s. 17. The form of notice prescribed is as follows: —

*Form of Notice of Objection to be given to Parties objected to.*

To Mr.

I HEREBY give you notice, That I object to your name being retained on the list of persons entitled to vote in the election of members [or a member] for the city [or borough] of                      . Dated this                      day of                      .

(Signed) A. B. of [place of abode], on the list of voters for the parish of                      .

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companies. The list, therefore, mentioned in the notice does not apply to any general list. The seventeenth section of the Registration of Voters Act, which requires the notices of objection to be given, says that the party objecting may object to any person as not entitled to have his name inserted "in *any* list of voters for the same city or borough;" and the word "*any*" was probably considered equivalent to the word "*the*," which is the word inserted in the form No. 11. But it is submitted that the form is too general. The voter ought to know to what particular list the objector refers. He may have qualifications in respect of the occupation of premises of a 10*l.* value, in as many as ten different parishes. [*Cresswell J.* It is enough if he proves a good qualification in *one* parish.] He must come prepared to prove that *all* are good, because he cannot learn, from the form in which the notice of objection is framed, which qualification it may be intended to dispute; and it is not to be assumed that a valid qualification will always be allowed by the revising barrister. The form No. 10., Schedule (B) (a), is the first form given in the schedule of notices of objection in cities or

(a) The following is the form referred to:—

*Notice of Objection.*

To the overseers of the parish [or township] of [or to the town clerk of the city, or borough] of [or otherwise, as the case may be].  
I HEREBY give you notice, That I object to the name of [ ] being retained in the list of persons entitled to vote in the election of a member [or members] for the city [or borough] of [ ]. Dated this [ ] day of [ ].

(Signed) A. B. of [place of abode] on the list of voters for the parish of [ ].

*Note.* — If more than one list of voters, the notice of objection should specify the list to which the objection refers; and if the list contains two or more persons of the same name, the notice should distinguish the person intended to be objected to.

boroughs, and the note at the foot of it must have been intended to apply to form No. 11. [*Tindal* C. J. You contend that a difficulty is thrown in the way of the voter who has more than one qualification, because, when he receives the notice of objection directed to himself as the party objected to, he cannot know, from the form of words there used, to what list the objection applies. But by the eighteenth section of the stat. 6 *Vict. c.* 18. the overseers are required to publish a list of the persons objected to, and that would give him all the information which he wanted.] It is submitted that he ought not to be compelled to go about from parish to parish, examining the lists on all the church-doors, in order to find out the list in which his name is objected to. [*Erle* J. He need only go to the parishes in which he has qualifying property.] It is more reasonable that the name of the parish should be inserted in the form. [*Tindal* C. J. It may be more reasonable; but the question is, whether the act requires it. The difficulty thrown in the voter's way by the omission is not one that overwhelms a man.] Under the Reform Act, no notice was required to be given to the party objected to, in boroughs, but merely to the overseers. The legislature has now directed that notice shall be given to the party himself, and it must have been intended that such a notice should convey all proper information. In *Tudball v. The Town Clerk of Bristol* (a) the decision of the Court proceeded upon the ground that the voter ought not to be put to unnecessary inconvenience by too strict an adherence to the form which is now in question. [*Tindal* C. J. The seventeenth sec-

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(a) *Antè*, p. 7.

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tion of the stat. 6 *Vict. c. 18.* says, that the notice to the overseers shall be given "according to the form numbered (10.) in the said Schedule (B), *or to the like effect*;" but the latter words do not occur when the form (No. 11.) is mentioned.] Nothing can be more unsafe, in general, than to rely on the forms given in acts of parliament. In many cases of convictions before magistrates, for instance, the convictions have been held bad, although the form given in the act of parliament has been exactly followed. In the notice of objection to parties inserted in the list of the livery, the form of which is given in Schedule (C) No. 4., under the twentieth section of 6 *Vict. c. 18.*, the name of the company to which the party objected to assumes to belong is mentioned, so that, in that instance at least, all the information is supplied which he could reasonably require. But, it is submitted, that is not the case with respect to form No. 11. Schedule (B). With regard to the notice of objection given to the overseers, it must be conceded that the heading is good, as it indicates the parish in which the qualification of the party objected to lies; but where there are extra-parochial places, like the *Temple* in the city of *London*, the overseers may have to make out more than one list (a), and the notice, therefore, given to the overseers should have been more precise in its terms. [*Erle J.* It is not stated in the case that there is more than one list in any parish, and therefore we cannot take judicial notice of the fact.]

(a) See 6 *Vict. c. 18. s. 22.* It is not provided, however, that the overseers shall make out separate lists; and it should rather seem, that only one list was intended to be made for the parish and the extra-parochial place.

*Humfrey* (with whom was *Grove*), *contra*. There is but one list made out by the overseers of each parish in *London*. In other cities or boroughs, where there are reserved rights of voting, the overseers are required, by the thirteenth section of the stat. 6 *Vict. c.* 18., to make out two lists; one being a list of persons entitled to vote as 10*l.* occupiers, the other a list of all other persons (except freemen) entitled to vote by virtue of any other right. But in *London* there are only two classes of persons who possess the franchise, viz. the 10*l.* householders, and those who are entitled to vote as freemen and liverymen; for whose registration special provision is made by the twentieth section of the statute. The party objected to has, therefore, all the information which is necessary, or which is required to be given by the statute. It is contended that the note at the bottom of the form No. 10. Schedule (B) must have been intended to apply to No. 11. also; but in a notice addressed to the party himself, it cannot be necessary to "distinguish the person intended to be objected to." The corresponding forms, Nos. 4 and 5. Schedule (C), which relate to the liverymen of *London*, are inverted in order; and it cannot be contended that the note at the bottom of No. 5., similar to that at the foot of No. 10. Schedule (B), has relation to the form No. 4. In *Tudball v. The Town Clerk of Bristol* (a) the objector misdescribed himself, by following the form given in the act too closely, and thus the party objected to might have been misled: but that is not the case here.

*M. D. Hill*, in reply. It would not be difficult to make the required alteration in the form, by adding,

(a) *Antè*, p. 7.

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after the words "I object to your name being retained on the list of persons," the words "*for the parish of* —, entitled to vote," &c.

TINDAL C. J. The objection in this case is, that the notices of objection which have been served by the respondent do not exhibit a sufficient compliance with the requisites of the stat. 6 *Vict. c. 18*. It appears to me, however, that the notices were fully sufficient. The difficulty complained of, with respect to the notice of objection served upon the party objected to, is, that as the notice does not specify the particular parish in which the qualification objected to was situated, and inasmuch as the party claiming to vote may have various qualifications within the city, in different parishes, it imposes upon him a difficulty in discovering in respect of which particular qualification the objection is made. I admit that there is some difficulty thrown upon the voter in the case supposed, and that if the notice of objection were shaped in the form suggested by Mr. *Hill*, that difficulty would be removed. But, what we have to consider is, whether, as the law now stands, such an alteration in the form be necessary. It is clear that no difficulty of the kind suggested can occur in respect of the notice to the overseers, where they have to make out only one list, because that notice can only apply to the qualification situate in the parish of which they are overseers. And although there may be some difficulty in the case of a notice directed to the party himself, the difficulty does not appear to me to be very great. In the first place, the party knows in what parishes his houses or other qualifications are situate. Further, the stat. 6 *Vict. c. 18. s. 24.* requires that the

list of persons objected to shall, after publication by the overseers, remain fixed for a period including two consecutive *Sundays* at the least in some conspicuous place where it was originally put up. There is, therefore, no very great difficulty imposed upon the party receiving a notice of objection to his right to vote, because he may make some inquiries of the objector, or he may go himself to the church-door, or send a friend to see whether any objection be made to him in respect of his qualification in any particular parish. The question, however, which we are to determine is this, — has this notice of objection been given in compliance with the act of parliament? Before the stat. 6 *Vict. c.* 18. there was no necessity in boroughs to give any notice to the party objected to; it was sufficient if a notice of objection was served upon the overseers. When that statute passed, it was thought but right that a party objected to in a city or borough should stand on the same footing as the voter for a county; and as the county voter was entitled to have a notice of objection addressed to him personally, it was considered that the voter for a city or borough ought to have the same privilege. The seventeenth section of the statute, therefore, provides, “That every person whose name shall have been inserted in any list of voters for any city or borough may object to any other person as not having been entitled on the last day of *July* next preceding to have his name inserted in any list of voters for the same city or borough;” and then, after requiring that a notice shall be given to the overseers who have made out the list in which the name of the person objected to is inserted, it goes on to say, “And every person so objecting shall also give or cause to be left at the place of abode of the person ob-

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jected to, as stated in the said list, a notice according to the form numbered (11.) in the said schedule (B).” Then, when we look at the notice of objection given to the party in this case, it is in exact and strict conformity with the form No. 11. Schedule (B.), which the statute requires to be followed. But it is objected, that there is a note at the foot of the form No. 10., which virtually applies itself to the form No. 11., and that as, where there are several lists, the notice of objection to the overseers must specify the list to which the objection refers; so, by analogy, where a party has several qualifications, the objector should state in his notice to the person objected to the name of the parish in which his alleged defective qualification is situate. But to this objection I answer that it is most clear from the manner in which the form No. 11. is prescribed by the statute, that there is no power in any court of law to draw an analogy from the form No. 10. In the former act of parliament, stat. 2 W. 4. c. 45., which gave a form of notice to the overseers, there was no such note at the foot; now, for the first time, a notice is required to be given to the person objected to, and the legislature appends the note to the form No. 10., and not to the form No. 11. Unless, therefore, we could take upon ourselves, not to declare the law, but to make it, as we might think most expedient, we have no right to require an objector to follow a different form from that which is pointed out by the statute. I think that the decision of the revising barrister was right, and ought to be affirmed.

CRESSWELL J. (a) I am of the same opinion. The notice of objection has followed the precise form of

(a) Maule J. was absent.

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words required to be used by the statute. It is a safe rule, in construing acts of parliament, to look at the words of the act; and to construe them in their ordinary sense, unless such a construction would lead to some manifest absurdity or injustice. It is not for us to say whether a form of notice might not have been framed which would have given a greater amount of information. It is enough, however, that the form which appears in the schedule does not lead to any manifest absurdity; nor do I think that it leads to injustice. It is said, that it leads to hardship; that may be so, but not to so much hardship as to require us to depart from the plain words of a statute. But what is the hardship in this case? When the party is objected to as an occupier, he has nothing more to do than to go round to the different parishes in which his qualifications are situate, and see to which of them it is that the objection applies. If he has *claimed* in different parishes, he must go to them all, and see whether his name is inserted or omitted in the list of persons claiming to vote. Again, he may go before the revising barrister, and prove any one of his different qualifications; and if he can prove one out of the number, that will be sufficient to entitle him to vote. It has been said that a party must go prepared to prove all his qualifications, as it was not to be assumed that every good qualification would be allowed; but a revising barrister is a judicial officer, and we ought to assume that he will do right. I may observe, also, that from the manner in which the appeals from their decisions have been disposed of, there is very little reason to suggest that revising barristers will not do justice. With respect to *Tudball v.*

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*The Town-clerk of Bristol* (a), I think that is no authority at all in this case. There the objector described himself as being on the list of voters for a particular parish, but his name was not on that list, but on another. On these grounds I think that the decision ought to be affirmed.

ERLE J. I also think that the notice of objection was sufficient. It has been argued that we ought to insert the words "for the parish of ————" in the form; but in doing so we should alter the act of parliament. I doubt the power of any court to alter the law where the law is perfectly clear. But supposing that we had the power, is there any inconvenience which imperatively requires such an alteration? I apprehend that a case in which a party possessed qualifications in fifty-one parishes would be likely to occur extremely seldom. If, however, it should occur, the party objected to might apply to the objector: the objector certainly is not bound to answer, but probably he would give the desired information. Even if he refused to give it, no substantial inconvenience would ensue. With respect to the note at the bottom of the form No. 10., I think it clear that the legislature did not intend it should apply to form No. 11. If any ambiguity has been occasioned by the difference, the consequences ought not to fall upon the objector, who has done all that the statute requires.

Decision affirmed.

(a) *Antè*, p. 7.

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WANSEY, Appellant, and PERKINS and Others,  
Respondents.

(LOCKEY's Case.)

January 23.

**THIS** was a consolidated appeal from the decision of *Thomas James Arnold, Esq.*, the revising barrister for the city of *London*.

Upon an objection to the name of *Richard Lockey* being retained in the list of persons entitled to vote in the election of members for the city of *London*, the barrister expunged the name from the list, subject to the opinion of the Court upon the following case: —

The name of the said *R. Lockey* was inserted in the list of voters for the parish of *St. Michael, Wood Street*, in respect of the occupation of a “warehouse, 8. *Wood Street*.” The only question raised in the case was, as to the effect of a claim to be rated to the poor rate, made by the said *R. Lockey*, under the following circumstances: —

On the 26th day of *July* 1837, the said *R. Lockey* was the occupier of the said warehouse as tenant, and on or about that day the said *R. Lockey* duly claimed to be rated to the relief of the poor, in respect of the said premises so occupied by him, *there being then a rate for the time being in the said parish, but there not being any rate due in respect of such premises*. The overseers neglected to put the name of the said *R. Lockey* on the rate for the time being. Other rates for the relief of the poor were subsequently made in the said parish between the said 26th day of *July* 1837, and the 31st day of *July* 1843; and between the 31st day of *July* 1843, and the 31st day of *July* 1844, two rates for the relief of

A claim to be rated under stat. 2 W. 4. c. 45., is only good for the rate for the time being.

Therefore, where a party claimed to be put upon the rate in *July* 1837, and the overseers neglected to do so, the Court held that, as there were subsequent rates in respect of which he made no claim, he was not to be deemed to be rated during the continuance of those rates, and had no right to vote.

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the poor were made in the said parish ; that is to say, one on the 11th day of *October* 1843, and one on the 11th day of *February*, 1844. The said *R. Lockey* occupied the said premises from the said 26th day of *July* 1837, to the said 31st day of *July* 1844, inclusive, but he was not rated, in fact, in respect of such premises, to any rate for the relief of the poor, made after the said 26th day of *July* 1837, and he did not make any claim to be rated after the said 26th day of *July* 1837.

The objection was, that the claim to be rated was limited to the rate for the time being, and that the said *R. Lockey* was not duly rated ; and the revising barrister decided in favour of the objection.

*M. D. Hill* (*Wordsworth* with him) for the appellant. By the thirtieth section of the Reform Act, it is provided, that any occupier of premises, of the description necessary to give a vote, may claim to be rated in respect of such premises ; and upon such claim being made, and the claimant paying or tendering the amount of the rate, if any, then due, the overseers are bound to put his name on the rate for the time being. If, however, after this, the overseers neglect or refuse to insert his name on the rate, he is to be deemed to have been rated from the period of such then existing rate. A claim to be rated, therefore, when once made and not attended to by the overseers, is sufficient to entitle the party occupying to be considered as being on the rate, so long as his occupation continues. [*Tindal* C. J. The question is, whether every fresh rate does not require a fresh claim. *Cresswell* J. The section does not say that the claimant shall be deemed to be rated, but that he shall be deemed to have been

rated. *Erle J.* Suppose the overseers attend to the claim, and put his name on the rate; must he not, if they leave it out afterwards, make a fresh claim to be put upon the rate? It could not have been intended that the claim should be repeated every time a fresh rate is made. [*Tindal C. J.* I see no reason to think that such was not the intention of the act. On the contrary, it seems to me that the party must not only claim to be put on every fresh rate, but must pay every rate when due; for if it were sufficient to make a claim, an occupier might remain quiet, and put the rate into his own pocket.] The demand to be rated and offer to pay, would be enough to fix the occupier with the next rate. [*Tindal C. J.* He might make the demand on one set of overseers, who the next year would be replaced by a new set of parish officers, who would know nothing about the matter. There is nothing at all in this point.]

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*Humfrey* (with whom was *Grove*) appeared for the respondents, but was not called upon.

*Per Curiam. (a)*

Decision affirmed, with costs.

(a) *Maule J.* was absent.

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(HILL'S Case.)

*A.* exclusively occupied the whole of the second floor of a house, as tenant to one *Knight*, who also resided in the house, the outer door of which was kept closed, both the landlord and *A.* having a key of such door. *Held*, that *A.* was a lodger only, and did not occupy premises as tenant, within stat. 2 W. 4. c. 45. s. 27.

THIS, like the last two cases, was a consolidated appeal from the decision of the barrister appointed to revise the lists of voters for the city of *London*.

The only question raised related to the sufficiency of the qualification. The claimant, *James Hill*, in his notice of claim stated the particulars of his qualification to be "Three rooms; 16. *Budge Row*." The claimant occupied the whole of the second floor in a house, No. 16. *Budge Row*, which floor consisted of three rooms, which were in his exclusive occupation, and were occupied by him as a dwelling-place and a printing-office. He occupied the rooms in question as tenant to one *Knight*, who occupied the shop and first floor in the house, and who resided therein. The outer or street-door of the house was kept closed, and *Knight* had a key thereto, as also had the claimant.

The revising barrister decided that *Hill* was not entitled to have his name inserted in the list of voters.

*M. D. Hill*, (with whom was *Wordsworth*) for the appellant. The present case is distinguishable from *Pitts v. Smedley* (a) in this respect, namely, that the claimant had an unrestricted and absolute right of ingress and egress, and not, as in that case, a merely permissive right of access to his apartments. He had, there-

(a) *Antè*, p. 196.

fore, a perfect and exclusive occupation of these three rooms, which, according to the principle laid down in *Wright v. The Town-clerk of Stockport* (a), clearly constituted a building, within the meaning of the twenty-seventh section of the Reform Act. It is found in the case that he had the exclusive occupation of the three rooms, and, having a key of the street-door, he had also an exclusive control over the outer door. The landlord had a key also, and therefore the case stands upon the same footing as if there had been no outer door at all, as where there are sets of chambers in the Inns of Court, or an outer door which was never locked. When a party has the power of going in and out of his rooms at all hours of the day or night, it is submitted, that he ought to be considered as an occupier, under the stat. 2 W. 4. c. 45. s. 27.

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*Humfrey* (Grove with him) for the respondent. It often happens that the owner is not the exclusive occupier of the whole of his house, and yet a tenant may occupy under him without acquiring a vote, although the tenant has the exclusive occupation of his own apartments. The claimant here cannot be said to have had an exclusive control over the outer door. He was merely a lodger. He referred to *Rogers on Elections* (b); to the observations of Lord Hardwicke in *Fludier v. Lombe* (c); and to the *Case of joint occupiers*. (d)

M. D. Hill replied.

(a) *Ante*, p. 82.

(b) 3d ed. p. 155.

(c) *Ca. temp. Hard.* 308.(d) 1 *Alcock's R. C.* 2.



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TINDAL C. J. A house may certainly be so completely divided into several and distinct tenements, that if the landlord gives up all dominion over it, these separate tenements may, for the purposes of the act, be considered separate buildings, so as to confer a vote; but that is not the case here. *Knight*, having the whole of the house, lets the present claimant, *Hill*, into the possession of the second floor, retaining himself the possession of the other part of the house. That does not appear to me to constitute a separate occupation of the second floor by *Hill*, but puts him in the situation of a lodger or inmate. It seems to me, upon the facts which are found by the case, that the landlord still retains the possession of the house, as a house, which he had before, and consequently, that the party to whom he lets rooms in that house only filled the character of a lodger or inmate, and was not an "occupier" of premises within the meaning of the stat. 2 W. 4. c. 45. s. 27.

CRESSWELL J. (a) I quite agree with the opinion expressed by the Lord Chief Justice.

ERLE J. The distinction between an occupier and a lodger is pointed out in *Fenn v. Grafton* (b), and *Monks v. Dykes*. (c)

Decision affirmed, with costs.

(a) *Maule J.* was absent.

(b) 2 Bing. N. C. 617.

(c) 4 M. & W. 567. See also *The Mayor of London v. The Mayor of Lynn*, 1 B. & P. 500.; and the judgment of *Crompton J.* in *Kearney's Case*, 1 Alcock's R. C. 24.

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BAGE, Appellant, and PERKINS, Respondent.

January 23.

**WHEN** this case was called on, no counsel appeared for the appellant.

Where the appellant does not appear, and the respondent does, the decision of the revising barrister will be affirmed with costs.

*Humfrey*, for the respondent, prayed the judgment of the court.

*Per curiam.*

Decision affirmed, with costs. (a)

(a) CROCKER, Appellant, and The Overseers of ST. MARY, LAMBETH, Respondents.

In this case also, which was called on at a later period of the same day, the appellant did not appear, and the Court, on the application of *Arnold* for the respondents, affirmed the decision with costs.

ALLEN, Appellant, and HOUSE, Respondent.

January 23.

**UPON** a case stated for the opinion of the court by *Charles Saunders, Esq.*, the revising barrister for the borough of *Taunton*, it appeared that, subject to the condition of registration, the right of voting for members for the borough of *Taunton* is only in the occupiers of property, by virtue of the statute 2 W. 4. c. 45., and in certain persons within a part of the parish of *St. Mary Magdalene*, qualified according to the usage of the

In the borough of *Taunton* the overseers make out two lists, one of parties entitled to vote under stat. 2 W. 4. c. 45. s. 27., the other of potwallers. A notice of objection was in the following form: —  
“ I object to your name

being retained on the list of persons entitled to vote as householders in the election,” &c. Held, that the notice was sufficient, although the words, “ as householders,” are not in the form No. 11. Schedule (B) in stat. 6 Vict. c. 18., it not appearing that the party objected to had been misled by the introduction of those words.

When one side only is heard, the party succeeding will be entitled to costs.

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borough as potwallers. A potwaller, according to such usage, is considered to be "one, whether he be a householder or lodger, who has the sole dominion over a room with a fireplace in it, and who furnishes and cooks his own diet at his own fireplace, or at some other place within the same house, at which fireplace he had a legal right so to do, and who also has actually cooked his diet at such fireplace." At the court of revision the overseers of the parish of *St. Mary Magdalene* produced a list, which had been duly made out and published according to the form No. 3., prescribed in Schedule (B), annexed to the act of 6 *Vict. c. 18.*, of persons entitled to vote in respect of property occupied by virtue of the 2 *W. 4. c. 45.*, and another list, which had been duly made out and published, of persons entitled to vote in respect of rights other than those conferred by the last-mentioned statute. In the latter list the names, places of abode, and qualifications of the voters were inserted, and the nature of the qualification was described by the words "a potwaller." In the list of occupiers the name of *John Allen* was entered as follows: —

Name.	Place of abode.	Nature of Qualification.	Property, where situate, &c.
Allen, John.	East Street.	Dwelling House.	East Street.

His name was not on the potwallers' list, nor had he claimed, nor was he entitled to be inserted in that list, or in the list of voters for any other parish within the borough.

*Thomas House*, a person on the list of voters for the borough, appeared at the court of revision as an ob-

jector to the name of the appellant. It was proved that he had given the proper notice of objection to the overseers, who had duly published it, and that he had given, before the 25th day of *August*, a notice in the following form to the appellant: —

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“To Mr. *John Allen*, of *East Street, Southside*. I hereby give you notice that I object to your name being retained on the list of persons entitled to vote *as householders* in the election of members for the borough of *Taunton*. Dated this 23d day of *August* 1844.

(Signed) “*Thomas House*, of *Silver Street, Taunton*.

On the list of voters for the parish of *St. Mary Magdalene* as a potwaller, and described therein as residing in *Victoria Place*.”

The words “as householders” were an interlineation. On the part of the appellant it was contended that, as there was no list of householders, as such, made out in the borough, the notice to him was vitiated by the introduction of the words “as householders.” On the contrary, it was said for the objector, that these words were introduced to distinguish the list of occupiers, in which the name of the appellant appeared in respect of a dwelling-house, from the list of potwallers, in which his name did not appear at all.

The revising barrister held the notice sufficient, and required it to be proved that the appellant so objected to was entitled, on the last day of *July* then next preceding, to have his name inserted in the list of voters in respect of the qualification described in such list. The qualification was not proved, and the name of the appellant was expunged from the list.

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The cases of twenty other parties were consolidated with the principal case.

*Kinglake* Serjt., for the appellant. The only question is, whether this notice is in compliance with the form No. 11. Schedule (B.), which is given by the stat. 6 *Vict.* c. 18. There is a difference between this case and *Quigley's case* (a), because here the overseers are to make out two distinct lists, one in respect of property occupied within the parish, the other of persons entitled to vote as potwallers. The notice of objection refers to a list which has no existence. There is no list of householders, and the objector, having introduced the words "as householders" into his notice, has left it doubtful whether the objection was meant to apply to the occupiers' list, or the potwallers' list, the term "householder" being equally applicable to both. [*Erle* J. Would the notice have been bad if it had said "I object to your name being retained on the list of persons entitled to vote as free and independent electors?"] It is submitted that any notice would be bad, which was calculated to mislead the party objected to.

*Cockburn* (with whom was *Cox*) was not called upon to argue the case for the respondent.

TINDAL C. J. It appears to me that this is substantially a good notice of objection, although the words "as householders" are inserted. Those words could not have misled the person objected to, and therefore if there was no necessity for their insertion, I can see no

(a) *Antè*, p. 235.

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reason why they should not be rejected. *Utile per inutile non vitiatur.*

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CRESSWELL J. (a) If the notice, not being in the exact form prescribed by the act, had been calculated to direct the attention of a party to a wrong list, the notice would have been bad; but I do not think that any such result could possibly have followed in this case.

ERLE J. Considering what the common understanding at *Taunton* must be with respect to the two rights of voting, I think there could have been no doubt which list was meant.

*Cockburn* applied for costs.

TINDAL C. J. I think that where we hear one side only, the case may be considered clear, and costs must be granted.

Decision affirmed, with costs.

(a) *Maule J.* was absent.

HINTON, Appellant, and HINTON, Respondent. January 23.

AT a Court held before *John George Phillimore, Esq.*, the revising barrister for the borough of *Wenlock*, the name of *Henry Cooper* was struck off the list of parish of *Madeley*. The name of *William Nicholas* appeared on the *Madeley* list of claimants, but in the list of voters for that parish it stood thus: — "*William Nickless*." Held, that the sufficiency of the notice was a question of fact, and not of law, the real question being, whether the name was so stated in the list of voters as to be commonly understood, pursuant to stat. 6 Vict. c. 18. s. 101.

A notice of objection was signed "*William Nicholas*, on the list of voters for the

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voters in the parish of *Much Wenlock* in the said borough, subject to the opinion of the Court of Common Pleas on the following case : —

A person whose name was proved to be *William Nicholas* objected to the vote of *Henry Cooper*. The notice of objection was signed by himself, with the words, “ *William Nicholas, of Colebrook Dale, in the parish of Madeley, on the list of voters for the parish of Madeley.*” *Madeley* is a suffragan parish of the borough of *Wenlock*. The notice was in all respects regular, and in conformity with the form prescribed by 6 *Vict. c. 18*. The sole objection to the validity of the notice turned upon this point, — whether, under the circumstances about to be stated, the objector was entitled to object at all; and whether, if so, his signature was sufficient.

The name referred to in the *Madeley* list was “ *William Nickless.*” The name of “ *William Nicholas,*” sent by the objector, was on the list of *claimants* on the church-door. It was clearly proved that this was intended for the objector’s name by the overseer, and that *William Nicholas*, the objector, was the identical person whose name was written *William Nickless* in the list of *Madeley voters*. It was also proved that the mistake had been committed in the lists of the preceding year, and that in 1843 *William Nicholas* had applied to the revising barrister to correct the mistake. The revising barrister had corrected the mistake, and inserted the name properly spelt, in the list, when he revised the said list. The overseer of *Madeley* swore that the repetition of the error was owing exclusively to his own negligence.

The barrister held the notice valid, and the case of the objector being established, expunged the name of

*Henry Cooper* from the list of voters, which, if the Court of Common Pleas were of a different opinion, was to be restored.

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The cases of thirteen other parties were consolidated with the principal case.

*Keating* for the appellant. The party objected to was not bound to answer the objection. The name of the objector, *William Nicholas*, was not inserted in the list of persons entitled to vote in respect of property occupied within the parish of *Madeley*. The name which appeared there was "*William Nickless*." [*Tindal* C. J. One question may be, whether that name is not *idem sonans* with the name published in the list.] That question, it is submitted, can hardly arise, because it is found by the case that the name of "*William Nicholas*" was on the list of *claimants*. The party objected to, finding the name of the objector in the latter, and not in the former list, would very reasonably conclude that *Nicholas* was not entitled to object. At all events, the voter ought not to be obliged, at great personal inconvenience, to make inquiries in order to ascertain whether "*Nickless*" and "*Nicholas*" were the same person; *Tudball v. The Town-clerk of Bristol*. (a) If a notice of objection were signed by a party named *Cholmondeley*, and the name on the list of voters were *Chumley*, an illiterate man would certainly be misled by the variance. [*Cresswell* J. Suppose the objector's name were *Thompson*, and it were spelt *Thomson* in the list, or *Smith*, and it were spelt *Smythe*, would a notice have been sufficient in that case?] It is submitted that,

(a) *Ante*, p. 7.



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the distinction between these names being well known, it would be too much to assume that such a notice would be good. [*Tindal* C. J. The question whether the name be *idem sonans* still arises; and in the pronunciation of a voter at *Colebrook Dale*, “*Nicholas*” and “*Nickless*” would probably sound pretty much the same.] However pronounced, the two names are essentially different.

*Gray* for the respondent. This is not a question of law, but a question of fact, which the revising barrister had no power to reserve for the consideration of the Court. (a) The stat. 6 *Vict.* c. 18. s. 101. provides “that no misnomer or inaccurate description of any *person*, place, or thing named or described in any schedule to this act annexed, or in any *list* or register of voters, or in any notice required by this act, shall in any wise prevent or abridge the operation of this act with respect to such *person*, place, or thing, provided that such *person*, place, or thing shall be so denominated in such schedule, *list*, register, or notice as to be commonly understood.” The only question, therefore, is, whether this person, *William Nicholas*, was so denominated in the *Madeley* list of voters as to be commonly understood. That is a question of fact, which the revising barrister has already decided in favour of the objector.

*Keating* in reply. This is a question of law, in which it was competent to the revising barrister to ask for the opinion of the Court. He has found the facts, and refers it to the Court to say what is the legal result,

(a) See 6 *Vict.* c. 18. ss. 42. and 65.

namely, whether the party objecting could legally object. The Court lately entertained an appeal, in which the question was, whether the facts stated amounted to residence (a), and so also, when the question was raised, whether rooms in a house were separate tenements or not. (b) In cases from the courts of quarter sessions, although their finding, like that of the revising barrister, is conclusive upon questions of fact, the Court of Queen's Bench would decide whether a pauper had gained a settlement by hiring and service, or by birth. The question here is, whether the party who sent the notice of objection was in a situation to object at the time.

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TINDAL C. J. I think the answer that has been given on the part of the respondent is conclusive, namely, that the question which has been submitted to our consideration resolves itself into a question of fact, and not into a question of law. If there had been any important variance between the form of the notice required by the act, and the notice of objection sent by the party whose name appeared on the list of voters, a different question would have arisen; but here the objection is that the name was wrongly spelt in the list, — a defect which is cured by the interpretation clause of the stat. 6 *Vict. c. 18.*, which provides that no misnomer shall prevent the operation of the act, if the person shall be so denominated as to be commonly understood. Now, whether the party's name was so stated in the list as to be commonly understood, surely

(a) *Whithorn v. Thomas*, antè, p. 125.

(b) See *Wansley v. Perkins (Hill's Case)*, antè, p. 252.; *Score v. Huggett*, antè, p. 198.; *Pitts v. Smedley*, antè, p. 196.

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is no question of law, but a mere question of fact. That fact the revising barrister seems to have already decided, because he must have determined in his own mind that the name was commonly understood, or he would not have held the notice sufficient.

The other judges concurred.

Decision affirmed.

January 27. DANIEL, Appellant, and CAMPLIN, Respondent.

In stating the nature of a voter's qualification in a city or borough, when the right of voting depends on property, it is only necessary to describe the property which gives the qualification, and not its incidents.

Where, therefore, a party occupied a house and shop jointly with another person, *Held*, that it was not necessary to state the fact of the joint occupation in the list of voters, and that the words "house and shop" were a sufficient description of his qualification.

THIS was a consolidated appeal from the decision of *John Tyrrell, Esq.*, the revising barrister for the city of *Bristol*.

It appeared that *James Daniel* had objected to the name of *William Camplin* being retained upon the householders' list of voters in the parish of *All Saints*.

The name was thus inserted in the list : —

Camplin, William.	High Street.	House and Shop.	High Street.
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*William Camplin* occupied the house and shop which conferred his qualification jointly with another person. The premises were of sufficient value, and all the other requisites necessary to give *William Camplin* a vote had been complied with, and the only objection was that the qualification stated upon the list should not have been "house and shop" merely, but ought to have been "the joint occupation of a house and shop." It was contended, on the other hand, that the words "house and shop" sufficiently described the qualification; but if not, the revising barrister was requested, under the

powers given to him by the fortieth section of the Registration Act, to insert such words as would make it appear that the occupation was joint. The barrister decided that the qualification as stated upon the list was sufficient, and retained the name of *William Camplin*.

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*Kinglake* Serjt. for the appellant. The qualification stated upon the list should either have been, "joint occupation of a house and shop," or "undivided moiety of a house and shop." By describing his qualification as consisting of a "house and shop" the respondent stated in effect that he was the *sole* occupier of the premises. Under the twenty-seventh section of the Reform Act a joint occupier would not be entitled to vote, but by the twenty-ninth section of the statute the right of voting is conferred in express terms in respect of the joint occupation of premises, in case the value of such premises shall be of an amount, which, when divided by the number of occupiers, shall give a sum of not less than 10*l*. for each occupier. In the *Irish* Reform Act, 2 & 3 *W.* 4. c. 88. there is no clause corresponding with the twenty-ninth section of the stat. 2 *W.* 4. c. 45, and accordingly the *Irish* Judges have unanimously held that joint occupiers cannot be admitted to register. *Case of Joint Occupiers.* (a) The qualifications required by the twenty-seventh and twenty-ninth sections of the Reform Act are, therefore, widely distinct, and ought not to be described in the same terms. The Court have held that in cases of successive occupation, under the twenty-eighth section of the act, the different premises occupied by the claimant ought to be set forth in the description

(a) 1 *Alcock's R. C.* 2.

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of his qualification in the list of voters; *Bartlett v. Gibbs.* (a) [Maule J. The ground of that decision was that the registration list ought to afford such information of the nature and situation of the premises, as would enable other parties to ascertain, upon enquiry, the value of the premises and the sufficiency of the occupation.] The principle of that decision applies in its full force to the present case, because premises which would confer a qualification upon one occupier, would frequently be below the value which would entitle two or more occupiers to vote in respect of them. [Maule J. Then, if a party occupied jointly with four others, you would say that the description of the nature of his qualification should be "one-fifth part of a house?"] That would, it is submitted, be an accurate description of his qualification. In the Appendix of Forms given in *Elliott on Registration* (b), in the form of a list of claimants for a county, the following instances are given, in the column headed "Nature of qualification;" "One undivided sixth share in freehold tenements;" "An undivided moiety of a freehold rent charge." [Tindal C. J. Do you find any thing of that kind in the Registration Act?] The schedules in the new act are left blank, but in schedule (H) No. 8. annexed to the Reform Act, various examples are given of the nature of the qualification. (c) It is most important in cities and boroughs that accurate information should be given to the public, in order that the value of the premises should be ascertained. The respondent was stated to be qualified in respect of the occupation of a house and shop; but in fact he occupied part only. [Maule J. You should

(a) *Antè*, p. 73.

(b) 2d ed. p. 619.

(c) These examples are, "Freehold house;" "Copyhold field;" "Lease of warehouse for years;" "50 acres of land as occupier."

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rather contend that he was *part occupier* of a house and shop.] In *Rex v. Great Wakering* (a), a house and land were demised to two persons, *Bullock* and *Clay*, by lease, for a term of years, at 16*l.* per annum. There was a covenant by them jointly and severally to pay taxes and rates, &c., but none to pay rent. *Bullock* occupied the whole premises, and paid the rent for five years, and it was held that, the demise being joint, each could only be considered as having rented a tenement at 8*l.* a year, and that consequently no settlement was gained by *Bullock*. In giving his judgment *Littledale J.* said (b), "The demise being to two as joint tenants, each was entitled to occupy an undivided moiety in his own right. The pauper, therefore, if he occupied the whole, would occupy one half in his own right, and the other half as bailiff to *Clay*, and would be accountable to him for the profits." So, in *Rex v. Tonbridge* (c), the premises occupied by the pauper were not of sufficient value, unless he could be considered as sole occupier of a garden. The pauper took the garden, but it was agreed between him and one *Maynard* that they should share the expense and profit. *Maynard* paid the pauper half the rent, and *Bayley J.* observed, that although it was not stated that there was a joint occupation, yet it must be taken that there was, and if so, it must be considered that the pauper occupied only a moiety of the garden. These cases shew that a joint occupation, when the value of the premises comes in question, is only a part occupation. Secondly, it is submitted that the barrister had no power, under the fortieth section of stat. 6 *Vict.* c. 18., to change the description of the qualification as it

(a) 5 *B. & Ad.* 971.(b) *Id.* 976.(c) 6 *B. & C.* 88.

1845. appeared in the list. [*Tindal* C. J. He may alter the description for the purpose of more clearly defining the qualification.]

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*Butt* for the respondent. The description of the voter's qualification, as it appeared in the list, was clearly good. There is nothing in the schedules annexed either to the Reform or the Registration Act, which makes it necessary to state the nature and extent of the interest which the occupier has in the premises. It is enough that the party should comply with the terms of the acts of parliament. The nature of the qualification means simply a description of the premises in respect of the occupation of which the party is entitled to vote. The length of the occupation and the value of the premises are not required to be stated. In Schedule (I) No. 1. to the Reform Act, the form of the list directed to be published by the overseers contains, in the column headed "Nature of qualification," the following examples of what was meant should be inserted under that head: "House, warehouse, shop, counting-house;" and in the corresponding form in the Registration Act, Schedule (B), No. 3., no examples at all are given. [*Maule* J. The question is, whether the nature of the qualification is the occupation of the premises or not. *Cresswell* J. The argument for the appellant is, that the nature of the occupation should be described.] The two acts being in *pari materia*, the schedules must be taken together, and then it will clearly appear that the legislature never intended to require any statement of the kind, which would lead to a great number of very minute objections. The overseers are not even directed to state whether the voter occupies as owner or tenant.

*Bartlett v. Gibbs* (a) is no authority for the appellant. The successive occupation of two sets of premises was of the essence of the right to vote, yet the Court held that in describing the nature of the appellant's qualification in that case, the two houses which he had occupied during the qualifying period should have been inserted in the list, not that his qualification should have been described as the "successive occupation of two houses." Neither does the *Case of Joint Occupiers* (b) advance the argument on the other side, there being no clause in the *Irish* act similar to the twenty-ninth section of the *English* act of parliament. In *Rex v. Great Wakering* (c), and *Rex v. Tonbridge* (d), the value of the premises was not sufficient. With regard to the power of amendment under the fortieth section of stat. 6 *Vict. c. 18.*, there can be no doubt that the barrister had a right to exercise it. No new or different qualification was set up, which was the ground of the decision in the second point determined by *Bartlett v. Gibbs*. (a)

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*Kinglake* Serjt. replied.

TINDAL C. J. It appears to me that the decision of the revising barrister was right. The objection taken to the vote of the respondent was, that in the list made out by the overseers, the nature of his qualification was improperly described. The description found upon the list was, "house and shop, *High Street*;" and it was contended on the part of the appellant that it ought to have been "joint occupation of house and shop." The question, therefore, is, whether in the claim made by

(a) *Ante*, p. 73.(b) 1 *Alcock's R. C.* 2.(c) 5 *B. & Ad.* 971.(d) 6 *B. & C.* 88.



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the party himself, or in the list of persons entitled to vote made out by the overseers, the subject-matter in respect of which the right is claimed, if in the joint occupation of two or more persons, should be stated to be in their joint occupation. I think we have no right to impose on those who lay claim to the elective franchise any regulation which is not rendered necessary by the fair construction of the statutes relating to this subject. Now, the thirteenth section of the stat. 6 *Vict.* c. 18. requires that a list shall be made out by the overseers of persons entitled to vote, according to the form No. 3. given in the Schedule (B) annexed to that act. The objection in the present case is confined simply to the list so made out by the overseers; but they are also required by the fifteenth section to make out a separate list of persons *claiming* to be entitled to vote, according to a form numbered 8. in the same schedule. In each of these forms we find one column headed "Nature of qualification," and underneath these words is left a blank. If these had been the only forms that had been given, either in that statute, or in the preceding statute, 2 *W. 4.* c. 45., it would have been left a matter of doubt how that blank was to be filled up; but when we turn to the form that has been given for the list of persons objected to, to be published by the overseers, in Schedule (I) No. 7. of the stat. 2 *W. 4.* c. 45., we find under the head "Nature of the supposed qualification," the word "shop," that is, the subject-matter of the qualification, viz. the property in respect of which the right to vote is claimed. We find also, that in a former form, No. 1., in the same schedule, four instances are given under the heading "Nature of qualification," one of which is "house," another "ware-

house," the third "shop," and the last "counting-house," which are the four very words found in the body of the twenty-seventh section of the Reform Act. It is, therefore, but a fair argument to infer that, when in the form that is now in question, No. 3. Schedule (B) of the stat. 6 *Vict. c. 18.*, we find the words "Nature of qualification" at the head of a column which is left a perfect blank, nothing more is required by the statute than to insert in that column one of those instances given in the schedule of the former act, containing the very words of the section which confers the right of voting upon occupiers of premises of a certain annual value. It has been argued, that as we have already decided that, in cases of successive occupation, under the twenty-eighth section of the stat. 2 *W. 4. c. 45.*, the different premises occupied in immediate succession by a party, must all be set forth in the description of his qualification, we ought, to be consistent, to go still further, and require it to be stated whether there be a joint or separate occupation of the premises. But to this I answer, that the reason and ground of our decision in *Bartlett v. Gibbs* (a) was, that the successive occupations of the different premises did in fact but make up one subject-matter in respect of which the right was claimed; whereas in the present case the subject-matter of the qualification is properly described, and the nature of the occupation is only a quality or incident attending on the enjoyment of the property. Now, it seems to me that as the twenty-seventh section of the stat. 2 *W. 4. c. 45.* gives the right of voting to

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(a) *Ante*, p. 73.

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the party who shall occupy, either as owner or tenant, certain descriptions of property, and as it has never been contended that the column in which his qualification is to be described shall specify whether he holds as owner or tenant, it would be going a great way to say that he must state whether the premises are in his sole occupation, or are occupied by him jointly with another person. In both cases the point seems to be matter of evidence for the consideration of the revising barrister, who has to decide whether the occupation be sufficient. I think, therefore, that the overseers have complied with the requisites of the act in describing the nature of the qualification as it is here expressed, and that the name of the respondent was properly retained on the register.

MAULE J. I also think that the decision of the revising barrister was right. It is contended that the qualification of the voter was insufficiently described, because it ought to have been stated that he occupied the house and shop in conjunction with another person, so that it might be ascertained whether he occupied premises of sufficient value to confer a vote. No doubt such information would be convenient to objectors, and it has been argued that it is important that the public should know the particulars of the voter's qualification. Our decision with respect to cases of successive occupation has been cited as an authority in support of that argument; but in *Bartlett v. Gibbs* (a) there was an entire absence of one portion of the qualification. It must be recollected, also, that the list in question is to

(a) *Antè*, p. 73.

be made out by the overseers, who cannot be supposed to know the exact extent of a man's interest in the property which he occupies. In a notice of claim greater particularity might be looked for, but, upon turning to the form No. 6. Schedule (B) in stat. 6 *Vict. c.* 18., it appears to me that the particulars of the claimant's qualification thereby required to be stated extend merely to a description of the property in respect of which the right is claimed, when the right depends on property.

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CRESSWELL J. It seems to me that the words "Nature of qualification" mean the nature of the thing occupied, whether it be a house, warehouse, counting-house, or shop, and consequently that the property only need be described, and not the nature of the party's interest in the premises. In describing the qualification of a county voter, a statement of the nature of his title is essential, and is evidently required by the form given in No. 3. Schedule (A), stat. 6 *Vict. c.* 18., the heading of which states that the claim is made in respect of *property*. But when a party claims to vote for a borough in respect of the *occupation* of property, it is only necessary to point out the property which is occupied.

ERLE J. I also think that the description of the party's qualification need not refer to his interest in the premises. The forms given in the schedules to the Reform Act and the Registration Act do not contain any allusion to the nature of the occupation, and it seems clear from one of them that the nature of the qualification means the nature of the premises occupied.

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In the form No. 4. Schedule (I) annexed to the Reform Act, of a notice of claim to be addressed to the overseers, the party is supposed to say, "I hereby give you notice that I claim, &c., and that my qualification consists of a house in *Duke Street* in your parish."

Decision affirmed.

January 27.

DEWHURST, Appellant, and FIELDEN,  
Respondent.

A claimant cannot join together two separate buildings, in order to make up the value required to confer a vote for a city or borough under the twenty-seventh section of stat. 2 W. 4. c. 45.

THIS was an appeal from the decision of *Stephen Temple*, Esq., the revising barrister for the borough of *Blackburn*.

*Joseph Fielden* was objected to as not being entitled to have his name retained upon the list of voters for the borough, in respect of the occupation of premises described in the list as "joiner's shop, warehouse, and land in *Thunder* and *Back Lane*." The party objected to had, together with his uncle, jointly occupied, as owners, a joiner's shop in *Back Lane*, and a warehouse, besides two yards, in *Thunder*, occupied for the deposit of stones and flags. The joiner's shop, the yards and the warehouse, were worth together above 20*l.* a year; but the joiner's shop alone was not worth 20*l.* a year; and the warehouse and yards alone were not together worth, independently of the joiner's shop, 20*l.* *Thunder*, where the warehouse and the two yards were situated, was three hundred yards distant from the joiner's shop, and there were many buildings and other descriptions of property lying between the joiner's shop in *Back Lane* and the warehouse and yards in *Thunder*, which pre-

mises, so lying between the two, were the property and in the occupation of other and different persons.

The revising barrister decided that the said *Joseph Fielden* occupied a joiner's shop, warehouse and land, of sufficient value to entitle his name to be retained on the list of voters for the said borough, within the meaning of the stat. 2 *W.* 4. c. 45. s. 27.

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*Cockburn* for the appellant. The question here is, whether two distinct buildings may be joined together, in order to make up the value necessary to confer a vote for a borough, and it is submitted that they cannot be united for that purpose. The twenty-seventh section of the Reform Act uses the words, "any house, warehouse, counting-house, shop, or other building," and by that form of expression *one* house or building of the requisite annual value must have been intended. The terms of that section are the same as those used in the *Irish* Reform Act, 2 & 3 *W.* 4. c. 88. s. 7., and it has been expressly decided, in the construction of that statute, that two separate tenements, neither of them being of the value of 10*l.*, will not confer the borough franchise upon the occupier, although the value of both exceeds that amount; *Sweetman's Case*. (a) [*Cresswell J.* In *Webb v. The Overseers of Birmingham* (b), the Court held that a lessee of houses, situate within a borough, was entitled to a vote for the county, although one of the houses comprised in the lease was of a sufficient annual value to give the occupier a vote for the borough. If the value of two or more buildings might, in order to make up the borough qualification, be added together,

(a) *Alcock's R. C.* 27.

(b) *Antè*, p. 18.

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the lessee in that case would not have been entitled to vote. (a)] That case appears to be precisely in point.

*Kinglake* Serjt., for the respondent. In *Rogers on Elections* (b) it is laid down that under the stat. 2 W. 4. c. 45. s. 27., two houses, or two warehouses, or a house and a warehouse, or any two members of the sentence, may be joined together in order to complete the value. *Webb v. The Overseers of Birmingham* (c) is no authority against this proposition, as the point was not raised in that case. The object of the statute was to give the franchise to persons who occupied property of a sufficient value, and it cannot be of any consequence whether they occupy one building or two. In cases arising upon the construction of the stat. 59 G. 3. c. 50. and 6 G. 4. c. 57., it is now distinctly recognised as a principle, that two separate tenements may be joined, in order to make up the required value; *Rex v. Macclesfield* (d); *Rex v. Tadcaster* (e); *Rex v. Iver* (g); *Rex v. Wootton*. (h)

*Cockburn*, in reply, was stopped.

TINDAL C. J. I think that the decision of the revising barrister must be reversed. The twenty-seventh section of the Reform Act begins by stating that the party who shall be qualified to vote for a borough must be an occupier; it then goes on to specify that he must occupy either as owner or tenant; and then, in describ-

(a) See stat. 2 W. 4. c. 45. s. 25.

(c) *Antè*, p. 18.

(e) 4 B. & Ad. 703.

(h) 1 A. & E. 232.

(b) 3d ed. p. 153.

(d) 2 B. & Ad. 870.

(g) 1 A. & E. 228.

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ing the subject-matter of the occupation, it says, "any house, warehouse, counting-house, shop, or other building." Now, the first observation which occurs to the mind upon reading these words is, that they are all in the singular number, and that it would have been just as easy, if it had been intended that several of these distinct subject-matters might together make up a sufficient qualification, to have used the plural number. The section, however, does not stop there, but it goes on to state that when the yearly value of a house or other building does not amount to 10*l.*, it may be made up by the occupation of land in conjunction with it. The franchise is conferred in respect of any house, &c., "being, either separately, or jointly with any *land* within such city, borough, or place occupied therewith by him." Applying the ordinary rule of construction, *expressio unius exclusio est alterius*, I cannot see why the joint occupation of land with a house, &c., should have been mentioned, unless it had been intended to exclude the occupation of two buildings. This view of the case is strengthened in some degree by the form which is published by the overseers, pursuant to the directions contained in stat. 6 *Vict. c.* 18. s. 13. Schedule (B), No. 3. That form, in pointing out the manner in which the qualifying property should be described, directs that the number of the house, if any, shall be given; a direction which seems to refer more to a single and definite subject-matter of qualification than that which is composed of several buildings. It may well be that the legislature considered that a man who occupies a house worth 10*l.* yearly may be in a proper condition of life to exercise the franchise, while they were unwilling to entrust it to one who would be obliged to add



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The rest of the Court concurred.

Decision reversed (a).

(a) See *Gadsby v. Barrow*, ante, p. 142.

## HILARY VACATION.

February 13. MARSHALL, Appellant, and BOWN, Respondent.

To render a conveyance void under the stat. 7 & 8 W. 3. c. 25. s. 7., as having been made in order to multiply voices, or to split and divide the interest in any houses or lands, the seller must be party or privy to the illegal object intended by the conveyance.

*Quære*, whether the statute would apply where the object of the vendor in making the conveyance was to multiply

voices, but the conveyance was made *bond fide* for a valuable consideration?

The owners of a house in *Lichfield* had contracted to sell it for a valuable consideration to A., who, after such contract, sold it *bond fide* to six other persons, and caused the conveyance to be made from the original owners to them. The object of A. in so doing was to increase the number of voters in *Lichfield*, but the object of the six purchasers was a *bond fide* investment of their money, though they expected that the possession of the property would entitle each of them to vote. *Held*, that as it did not appear that the parties conveying had any knowledge of the object for which the house was purchased, the conveyance was not void under the statute.

AT a court held before *Thomas Bros*, Esq., the barrister appointed to revise the list of voters for the city of *Lichfield*, *William Marshall* objected to the names of *John Bown*, *Robert Leighton*, *John Mellor*, *Ralph Pennington*, *James Radford*, and *William Stokes*, being retained on the second list of voters for the parish of *St. Michael*, in the said city. The revising barrister retained the names, subject to the opinion of the court on the following case:—

The parliamentary borough of the city of *Lichfield* is a county of itself, and, prior to the passing of the statute 2 & 3 W. 4. c. 45., freeholders had the right to vote in the election of members for the said city. In the second list of voters duly made out by the overseers of the

parish of *St. Michael*, in the said city, the following six names appeared : —

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Christian Name and Surname of each.	Place of Abode.	Nature of Qualification.	Street, Lane, or other Place in this Parish where the Property is situate.
Bown, John.	Wade Street.	Freehold House.	St. John Street.
Leighton, Robert.	Footherley.	Freehold House.	St. John Street.
Mellor, John.	Little Ashton.	Freehold House.	St. John Street.
Pennington Ralph.	Shenstone.	Freehold House.	St. John Street.
Radford, James.	Stowe Hill.	Freehold House.	St. John Street.
Stokes, William.	Freeford.	Freehold House.	St. John Street.

Objections were duly made to each of the above names being retained in the said list of voters for the said parish in respect of the above qualification; and, upon the parties appearing to support their title to have their names retained in the said list, it was proved that the said *John Bown* and the other five persons were inserted in the said list in respect of the *same freehold house* in *St. John Street*, in the said city, and that they became and were the joint owners of it under the following circumstances: Prior to *Lady-day*, 1843, one *William Gorton* contracted in his own name with the then proprietors of the house for the purchase of it at the price of 292*l.* 5*s.*, and having, after such contract, *bonâ fide* sold the said house to the said *John Bown* and the five other persons above named, in equal shares, he caused a conveyance of it from the vendors to the said *John Bown*, and the five other persons above named, to be prepared by their solicitor, which was afterwards duly executed by the vendors, whereby the said house was, in consideration of the said sum of 292*l.* 5*s.*, absolutely conveyed to the said *John Bown* and the other five persons above named, to hold to them in undivided sixth parts as tenants in common in fee-simple. The purchase-

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money was paid to the vendors by the hands of the said *William Gorton*, but was the proper monies of the said *John Bown* and the five other persons above named, and contributed by them in equal shares. The house was let to a respectable tenant at 15*l.* a year, and was worth at least that rent. The object of the said *William Gorton*, in proposing the said purchase to the said *John Bown* and the five other persons above named, was to increase the number of the voters for the city of *Lichfield*; but the purchase on the part of the said *John Bown* and each of the above-named persons was a *bonâ fide* investment of their money, which they would not have made, unless they had been satisfied with the value of the premises, and the income they were to receive from the investment. They also all expected that the possession of the property would entitle each of them to a vote for the city of *Lichfield*; but there was no stipulation or understanding before, or at the time of, the conveyance to them, that they or any of them should vote, in respect of the said house, in any particular way, or in support of any particular interest. The said *John Bown* and each of the other above-named five persons had been in the receipt of 50*s.*, in respect of his share of the rents and profits of the said house for his own use for twelve calendar months next previous to the last day of *July*, 1844; the said sum of 50*s.* having been paid to each of them by the said *William Gorton* out of the said rent, which the said *William Gorton* was authorised to receive on their behalf; and each of them had resided for six calendar months next previous to the last day of *July* within the said city of *Lichfield*, or within seven statute miles thereof.

It was objected that the conveyance of the said house

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to the said *John Bown* and the other five persons above named, under the above circumstances, was void and of none effect by the provisions of the statute 7 & 8 *W. 3. c. 25. s. 7.*, as being made to them in order to multiply voices, and to split and divide the interest in such house, and that under the said act no more than one single voice ought to be admitted for the said house. The barrister was of opinion that there had been a *bonâ fide* purchase of the said house by the said *John Bown* and the five other persons above named for a valuable consideration; and that the seventh section of the said statute did not apply to a conveyance made under such circumstances, and that the provision "that no more than one voice shall be admitted for one and the same house or tenement," related only to boroughs in which, at the time of the passing of the said act, the right of voting was in householders or inhabitants paying scot and lot; and he was of opinion, on the whole case, that the said *John Bown* and the five other persons above named were entitled to have their names retained in the list of voters for the city of *Lichfield*, in respect of their respective shares in the said freehold house.

The cases of five other persons were consolidated with the principal case.

*Byles Serjt.* for the appellant (in *Michaelmas* term, *November 21st*). The decision of the revising barrister is in direct contravention of the stat. 7 & 8 *W. 3. c. 25. s. 7.*, by which it is enacted "that all conveyances of any messuages, lands, tenements, or hereditaments, in any county, city, borough, or town corporate, in order to multiply voices, or to split and divide the interest in any houses or lands among several persons to enable

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them to vote at elections of members to serve in parliament, are hereby declared to be void and of none effect, and that no more than one single voice shall be admitted for one and the same house or tenement." It is only necessary to refer to the plain language of the act, to show that the revising barrister was wrong.

*Kinglake Serjt., contra.* Before the stat. 7 & 8 W. 3. c. 25. passed, the possession of a freehold for one day only before the day of polling entitled a party to vote, and that act was never intended to apply to *bonâ fide* conveyances, but to collusive grants, made under a secret condition to reconvey the property to the grantor, after the grantee had polled his vote. That such was the object of the act is clear from the language of the stat. 10 Ann. c. 23. s. 1., which recites the stat. 7 & 8 W. 3. c. 25. s. 7., and makes further enactments "for the more effectual preventing of such undue practices." The stat. 18 G. 2. c. 18. ss. 1. and 5., and stat. 19 G. 2. c. 28. s. 4., are *in pari materiâ* with the former statutes, and contain further provisions for effectuating the same object. The argument has been now raised for the first time that the stat. 7 & 8 W. 3. c. 25. s. 7., applies to *bonâ fide* conveyances. He referred to the *Okehampton Case* (a), and to *Elphinstone's Case*. (b)

*Byles Serjt.* in reply. The case clearly comes within the mischief contemplated by the statute. The legal estate was in a party whose name does not appear, but *Gorton*, having entered into a contract to purchase, had an equitable estate in the property, and afterwards caused

(a) 1 Peck. 359.

(b) 3 Lud. 370.

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it to be conveyed to *Bown* and the other vendees, in order to increase the number of voters for the city of *Lichfield*. *Gorton* must, therefore, be considered as the vendor, and having made a conveyance for the purpose of multiplying voices, the conveyance is rendered void by the statute, although the vendees were not privy to this intention. The statute is not to be construed strictly, as it is a remedial act. [*Erle J.* It can hardly be regarded in that light, when it avoids a conveyance made upon a valuable consideration. *Maule J.* One man commits a fraud, for which you wish to punish another. You say that the vendor has been guilty of a fraudulent act, and according to the construction of the statute now contended for, the innocent party, the vendee, is to lose his money, which the guilty party is to keep.] An innocent vendee might recover the money in an action for money had and received. [*Maule J.* If the vendor had not spent it in the mean time. *Tindal C. J.* The vendee may have built upon the land before the illegality of the vendor's intention has transpired.] Cases of hardship may sometimes occur, but the Court will give effect to the plain words of the act.

*Cur. adv. vult.*

TINDAL C. J. now delivered the judgment of the Court. The objection taken against the claim of *Bown* and of the several other persons mentioned in the case, to the right of voting as freeholders in the election of members for the city of *Lichfield*, was this, that the six persons therein firstly named claimed the right of voting in respect of one and the same freehold house, and that the conveyance to those persons was void under the provisions of the act 7 & 8 W. 3. c. 25. That statute

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enacts that "all conveyances, in order to multiply voices, or to split and divide the interest in any houses or lands among several persons, to enable them to vote at elections of members to serve in parliament, are thereby declared to be void and of none effect."

The argument before us proceeded upon the supposition that the facts of the present case brought it within the scope and operation of that statute; and we are called upon to give the legal construction of that statute with reference to the abstract question whether a *bonâ fide* conveyance, where the money was really paid by the purchaser, and there was no secret trust or reservation in favour of the seller, but where the object of the conveyance was to multiply voices and to split and divide the interest, fell within the provisions of the statute. Whenever that question comes before us we shall be prepared to give our opinion upon it; but as we think the facts stated in this case do not raise the question, it would be premature to do so on the present occasion. For we think the obvious meaning of the statute is, that, in order to make the conveyance void, the *seller* must be party or privy to the illegal object intended by the conveyance; for it would indeed seem to be an unreasonable consequence, and one which could never have been in the contemplation of the legislature, that a person who sold property *bonâ fide* to several persons as purchasers, having no intention himself to evade the statute, and no knowledge of any such object or design on the part of the purchasers, should afterwards, and at any distance of time, find the conveyance void, the land thrown back upon his hands, and himself liable to refund the purchase money, on account of its having been subsequently discovered that the purchase was

made by the several persons to whom it was conveyed, in order to split and divide the interest and to multiply votes. And the necessity of this privity and intention on the part of the seller appears further from the subsequent statute, 10 *Ann. c. 23.*, which after reciting the statute of *W. 3.*, and that the subsequent statute was made for the more effectual preventing such undue practices, proceeds to make provisions for cases in which the object of the conveyance cannot but be known to the party who conveys the estate; and is still further evident from the statute 53 *G. 3. c. 49.*, which enacts that a devise made for the same purpose shall be taken to be a conveyance within the meaning of the former statutes. Now looking at the case before us, there is not only no statement of the fact, but no reason to infer the fact, that the former proprietors of the house, who were the conveying parties, had any knowledge whatever of the object for which the house was purchased at the time they executed the conveyance to the six claimants. *Gorton* contracted in his own name with the proprietors for the purchase of the house, such proprietors, so far as appears, not having any knowledge whatever of any of the six persons to whom the conveyance was afterwards made, before the actual execution of the conveyance. Then, *Gorton*, as it is stated, after entering into the contract, *bonâ fide* sold the house to *Bown* and the five other claimants; and all that was done by the proprietors was, that, upon the request of *Gorton*, they executed the conveyance to such new purchasers.

And as to the argument urged on the part of the appellant, that *Gorton* may be considered as the vendor, and the conveyance taken to be his conveyance within the meaning of the statute, it appears a sufficient answer,

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that, upon the facts stated in the case, there is no proof that he had any thing to convey, or even that he was a party to the conveyance which is contended to be void under the statute.

As the case, therefore, seems to us not to be brought within the statute, we are of opinion that the objection taken before the revising barrister never properly arose; and, therefore, without giving any opinion upon the merits of that objection, it is sufficient to say, that the names of the six claimants in respect of the first purchase, and of the five claimants in respect of the second purchase (which was made under circumstances precisely similar with the first) were rightly retained on the list.

We therefore give our judgment for the respondent.

Decision affirmed.

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## EASTER TERM.

BAXTER, Appellant, and NEWMAN, Respondent. *April 30.*

**T**HIS was a consolidated appeal against the decision of *Percival A. Pickering, Esq.*, the barrister appointed to revise the lists of voters for the *West Riding of Yorkshire*, who stated the following case for the opinion of the Court:—

The claimants, *Bateman, Brookbank*, and thirty-five other persons, joined many other persons in forming a partnership to build and carry on their respective trades in a mill, which was built in manner hereinafter mentioned. Money was subscribed by all the partners, part of which was appropriated to buy freehold lands, which were conveyed unto and to the use of certain trustees, their heirs and assigns absolutely. Other part of the money was appropriated to build the said mill upon such lands, and the remainder of the said money was appropriated to buy machinery, &c. for the purpose of the mill. By a general partnership deed, executed by the said trustees, the above claimants, and all the other partners, the trust of the freehold lands so conveyed to the said trustees as aforesaid, and of the said

Land was bought, and a fulling-mill erected thereon, and fitted up with machinery, out of monies contributed by a large number of persons. By a general partnership deed the land was conveyed to trustees and their heirs, and was vested in them for the purpose of the conduct and management of the trade carried on by the subscribers.

The concerns of the company were managed by a committee appointed by the shareholders, and the committee were in the occupation of the mill and premises, and employed servants to work it.

The partnership deed declared, that the lands, mill, &c. should be deemed and considered as or in the nature of personal estate, and not real estate, and should be held in trust for the parties thereto, as part of their partnership stock in trade. It also provided that the land, &c. should be liable to the claims for indemnity, &c. of the committee and trustees.

*Held*, that as there was no trust which was absolutely incompatible with the existence of a present equitable freehold interest in the premises, in the several shareholders, such equitable interest might be considered as vested in them, and the value of their shares being sufficient, conferred a vote on each of them.

The trustees had, under the powers given by the deed, borrowed money for the purposes of the mill, for which they had given bonds and notes in their own names. *Held*, that the money so borrowed had not the effect of a mortgage on the shares.

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mill then to be built, the machinery and every thing belonging or appertaining to the said lands, mill, and premises, were declared to be that the said joint-concern, trade, and business, should at all times during the continuance of the copartnership, be conducted and carried on in the names of the trustees, and the survivors and survivor of them; “and that all and singular the estates, property, goods, chattels, and effects belonging, or which shall belong to, or which have been and shall from time to time be purchased by or for or on account of the said partnership, or for carrying on the said joint concern, trade, or business, shall be conveyed, transferred, delivered, and assigned to, and vested in such trustees or trustee for the time being, who shall at all times stand seised or possessed thereof, and interested therein, upon trust, for the benefit of themselves and their partners in the said joint concern, as part of their partnership joint stock in trade.” And that all contracts, dealings, sales, purchases, payments, receipts, bills, notes, drafts, orders, securities, actions, suits, proceedings, matters, and things whatsoever, for or on account or in respect or relating to the said joint trade, should be and be carried on in the names of such trustees or trustee for the time being. There were also other provisions in the said deed in the words following: “That at all times, and from time to time during this copartnership, it shall and may be lawful to and for the trustees for the time being, at the request and by the direction of three-fourth parts in value of the partners who shall be present, either in person or by proxy, at any general meeting to be held after ten days’ previous notice thereof in writing, to be affixed on the principal door of the said mill by the committee

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for the time being, to take up, borrow, and raise, upon the credit of the joint trade, or by or upon mortgage or other security of all or any part or parts of the stock, property, estate, or effects of and belonging to the said copartnership, any such sum or sums of money to be employed in the said joint trade, as such three-fourth parts of the said partners at such last above-mentioned or any other general meeting to be held in like manner shall order or direct; and that each and every of the said parties hereto, his, her, and their executors, administrators, and assigns, shall and will pay his, her, and their share of every sum and sums of money which shall be so taken up, borrowed, and raised, in proportion to the number of shares he, she, or they shall hold in the said joint trade. And it is hereby agreed and declared that the said lands contracted to be purchased as aforesaid, and the mill and other buildings which have been and shall be erected and built thereon, and all other lands, tenements, and hereditaments, which shall or may be purchased by, with, or out of the copartnership joint stock monies and effects, and be received in exchange, *shall be deemed and considered as or in the nature of personal estate, and not real estate*, and shall be held in trust for the said several parties hereto respectively, and their respective executors, administrators and assigns, as part of their partnership stock in trade, in the same parts, shares, and proportions, as they are and from time to time shall be interested in or entitled to the partnership stock in trade, monies, and effects. And it is hereby provided, declared, and agreed, that the person or persons who shall advance or pay any money to the trustees or trustee for the time being of the said copartnership or company, their or his heirs, executors, administrators, or assigns, or to their or his agent or agents, or any

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other person or persons, under their or his direction, upon any mortgage or mortgages, or other security, of or upon all or any part or parts of the said copartnership joint stock property, estate, and effects, or upon any exchange of the same, or any part thereof, or otherwise, pursuant to these presents, shall not be obliged or required to see to the application of such money, or be answerable or accountable for the misapplication or non-application of the same, or any part thereof, nor to see or inquire whether any order, authority, or direction, for any such mortgage, or security, or exchange be made or given by the said partners, any or either of them, or whether any such mortgage or security or exchange be made pursuant or in conformity to the powers, authorities, and directions herein contained, and that all receipts which shall be given by the said trustees or trustee for the time being, any or either of them, or his, their, or any or either of their heirs, executors, administrators or assigns, agent or agents, or by any other person or persons to whom the same money shall be paid, under their or his direction, shall be good and sufficient discharges for the sum or sums of money which therein or thereby shall be expressed or acknowledged to be or to have been received. And that every mortgage and security and conveyance by way of exchange, which shall be made, executed, or given by the said trustees or trustee for the time being, or any or either of them, his, their, or any or either of their executors, respective heirs, executors, administrators, and assigns, shall be binding and conclusive on all the said partners and their respective heirs, executors, administrators and assigns, to all intents and purposes whatsoever. Provided also, and it is hereby further declared and agreed, that the persons elected or to be

elected on the committee of the said copartnership, and every of them, also all and every the present and future trustees or trustee thereof, and their respective heirs, executors, and administrators, shall now and always stand and be indemnified and saved harmless by the copartnership in and for all lawful acts, deeds, and transactions done, performed, and executed in pursuance and by virtue of these presents, and the land, stock, property, estates, and effects, of and belonging to the said company or copartnership, shall in the first place be appropriated and applied, and the same is and are hereby declared to be subject and liable to indemnify, exonerate, and discharge them, and every of them, of, from, and against all actions, suits, and prosecutions whatsoever, and also to reimburse them the said committee, trustees, and trustee, and every of them, for the time being, their and every of their heirs, executors, and administrators, estates, and effects, all such costs, charges, expenses, and demands, as shall or may happen to arise to them or any of them, or which they or any of them shall reasonably expend, sustain, or be put unto; and also subject and liable to such a reasonable allowance to the said committee for their loss of time as a majority of the said partners shall adjudge, in, for, and concerning the trusts aforesaid, or any of them, on the execution or performance thereof."

The said mill was built according to the terms of the partnership deed, and the business and trades were carried on therein in manner following: —

The concerns of the company were managed by a committee appointed by a general meeting of shareholders, and the committee were in the occupation of the mill and premises, and employed servants to work it. The mill was used for the purpose of fulling cloth.

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The shareholders did not carry on one trade jointly together, but each shareholder brought his own cloth to be fulled at the mill. If any other person, who was not a shareholder, brought cloth to be fulled at the mill, he was charged a certain sum for the use of the mill, which was paid to the committee; and every shareholder who brought cloth to be fulled at the mill was debited with the same sum proportionably for the amount of cloth which he had fulled at the mill, in the general annual settlement of the profits arising from the use of the mill. The trustees had, under the powers of the partnership deed, and with the consent of the general meeting of the shareholders, *borrowed sums of money for the purposes of the mill, for which they had given bonds and notes in their own names only, and no part of the partnership property had been mortgaged.* The personal property of the company was greater in amount than the sums so borrowed by the trustees, and was sufficient to meet such sums and interest thereon, and all other liabilities incurred by the company or by the trustees in their behalf. The amount of shares possessed by each of the above claimants respectively in the real property of the company was sufficient to confer a vote, provided the interest acquired by such shares could be considered as an interest in real property; but it was objected before the revising barrister, that the interest acquired by the above claimants as the owners of shares was only an interest in personalty.

With regard to the above claimants, *Jonas Bateman* and *John Brookbank*, it was also objected that the money so borrowed by the trustees on bonds and notes as aforesaid, should be considered as a mortgage on the real property of the company, and that such sums, with

interest thereon, should be deducted from the value of the real property.

The revising barrister overruled the objections in the case of each of the above claimants, and allowed the votes of each claimant respectively.

If the Court of Common Pleas should be of opinion that, under the said partnership deed, the shares of the said claimants respectively in the said property of the company cannot be considered as a legal or equitable interest in real property, then the votes of each of the above claimants respectively to be disallowed; or if the Court of Common Pleas should be of opinion that the sums of money so borrowed by the trustees as aforesaid ought to be considered at law or in equity as a charge on the real property of the company, then the vote of each of the above claimants, *Jonas Bateman* and *John Brookbank*, to be disallowed; otherwise the decision of the revising barrister to be confirmed.

*R. C. Hildyard* for the appellant (in *Hilary* term, *January* 16th). The claimants acquired no interest in the realty by the purchase of the land, mill, and machinery. They were only entitled, under the stipulations of their deed of partnership, to the profits arising from the trade carried on at the mill. The law on this point may be considered as settled by the case of *Bligh v. Brent* (a), where it was held that the shares in the *Chelsea Waterworks Company* were merely personal property, though the act of parliament under which the company was incorporated did not declare them to be such. Lord *Abinger* C. B. observed (b), in the course

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(a) 2 Y. &amp; C. 268.

(b) P. 279.



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of the argumen. in that case, "Though the shareholders may have the profits, the corporation may have the interest in the land, and not the shareholders." And *Parke* B. put hypothetically the very case which is now before the Court, saying, "Suppose lands to have been purchased for the purpose of an undertaking, and to have been conveyed to certain parties, who execute a deed of trust, upon trust to divide the surplus profits among the original subscribers; would their having the surplus profits give the original subscribers any estate in the land? It appears to me that the company are as distinct from the proprietors of shares as one man is from another." By the terms of the act of parliament every shareholder became a member of the corporation; but the Court held, nevertheless, that the shares were personal estate. The present is a much stronger case, because here the legal estate is conveyed to the trustees absolutely, while in *Bligh v. Brent* (a) the legal estate was vested in the corporation, of which the shareholders were members. The authority of that case was recognised in *Bradley v. Holdsworth*. (b) It is submitted, therefore, that the revising barrister was wrong.

*Martin* for the respondent. The interest of the shareholders in the property is an interest in realty. All the property is either land or something that is fixed to the land; and the law will not allow parties to alter the nature of property by a declaration in a deed that its nature shall be considered different from that which it is. A testator may alter the distribution of his assets, but, as Lord *Tenterden* C. J. observed, in

(a) 2 F. & C. 268.

(b) 3 M. & W. 422.

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*Barker v. May (a)*, it is quite clear that he cannot alter the legal character of the property, by directing that it shall be considered part of his personal estate. [*Cresswell J.* I do not suppose that will be disputed by the other side. The argument for the appellant is, that the shareholders never had the land.] It is submitted that they are in actual possession, through the committee appointed by themselves, who, as the case finds, occupy the mill, and manage the business carried on there. Each shareholder has a right to go upon the land, and to full his cloth at the mill, and the profits which he derives therefrom are sufficient in amount to entitle him to the franchise. The case resembles that of two farmers building a barn, and threshing their corn there in common. *Bligh v. Brent (b)*, therefore, is quite distinguishable. Where land belongs to a corporation, the individual members of the corporation are neither legally nor equitably interested in the land. [*Cresswell J.* In *Bligh v. Brent (b)* it is said by *Parke B. (c)*, "The corporation is separate from the members. If the stock were assigned to a third person as a trustee, he would have the same interest as the corporation. All the subscribers have to do is, to receive the net profits." That seems to be not unlike the present case.] The opinion there expressed was extra-judicial. In the following page of the report Lord *Abinger C. B.* observes, "If a joint stock company purchase property, each individual shareholder has an interest in it, but the moment the company becomes a corporation, the corporation have the property in trust for the individuals." [*Cresswell J.* Lord *Abinger* seems, in saying this, to

(a) 9 B. &amp; C. 494.

(b) 2 Y. &amp; C. 268.

(c) P. 279.

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have agreed with Mr. Baron *Parke*.] If, instead of building a mill on land, a number of parties were to buy land and lay down a railway, which they might do without obtaining an act of parliament, they would not the less be seised of the land, because by conveying passengers and goods along the line they received large annual profits. But, in *Bradley v. Holdsworth* (a), which is relied upon by the other side, there was an express clause in the act of parliament, under the authority of which a railway company in that case was formed, declaring that the shares should be deemed personal estate, and be transmissible as such. That case, therefore, has no application. He referred to *Ex parte Vauxhall Bridge Company* (b); *Ex parte Lancaster Canal Company* (c); *Buckeridge v. Ingram* (d); and *Townshend v. Ash*. (e)

*R. C. Hildyard* replied. It has been admitted that the shareholders have no legal estate, and the question is, whether they are seised in equity. The language of the deed, when speaking of the interest which the shareholders are to have in the property, evidently applies only to personal estate. At all events, if the money borrowed by the trustees can be treated as a mortgage upon the property, *Bateman* and *Brookbank* will be disqualified, as the value of their shares would not be sufficient, in that event, to confer a vote.

TINDAL C. J. We will consider this case. It is one of great importance.

*Cur. adv. vult.*

(a) 3 M. & W. 422.

(b) 1 Gl. & Jam. 101.

(c) Mont. & Bligh, 112.

(d) 2 Ves. jun. 651.

(e) 3 Atk. 336.

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TINDAL C. J. now delivered the judgment of the Court. In this case, there were thirty-seven persons who claimed the right of voting for the West Riding of the county of *York*, in respect of a qualification described upon the list as "freehold shares in a mill, houses and land." The revising barrister found that the amount of shares possessed by each of the claimants in the real property of the company was sufficient to confer a vote, provided the interest acquired by the shares could be considered as an interest in the real property. The objection taken before him was, that the interest acquired by the several claimants, as owners of such shares, was an interest in personalty only, and not in land; but the revising barrister overruled this objection, as well as another, which applied solely to the cases of two of the claimants, *Bateman* and *Brookbank*, to which objection we shall afterwards advert, and allowed the votes of all the claimants. And we are of opinion that the revising barrister was right in his decision, and that the votes of the several claimants ought to be allowed.

That the claimants took *no legal interest* in the real property is placed beyond doubt. The freehold land was purchased with the money contributed by the several claimants, and by other shareholders, and conveyed to trustees "unto and to the use of them, their heirs and assigns absolutely," the trusts, subject to which the trustees were seised, being declared by the copartnership deed subsequently executed by the trustees, and the several members of the copartnership thereby created. The only question therefore, is, whether the claimants take such an *equitable interest* in the realty as will by law give them a right to vote; for, under the provisions of the stat. 7 & 8 *W. 3.*; 18 *G. 2. c. 18.*; 2 *W. 4. c. 45.*;

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and 6 *Vict. c. 18.*, a person seised in equity is to have the same right to vote as if he had the seisin in law of a freehold estate to the value of 40s. by the year, according to the provisions of the statute 8 *H. 6. c. 7.* And the ground on which we consider these claimants to have such right is this: that the property of which the trustees are seised in trust for the benefit of the shareholders who formed the copartnership is freehold land; that the copartners by their committee are in possession thereof; that the trusts declared by the deed are no more than agreements and regulations entered into between the copartners for the better carrying on the joint trade by means of such land and the mill erected thereon; and are not trusts which are inconsistent with an equitable seisin of the freehold in the copartners; and, lastly, that it is found by the revising barrister that the amount of the shares of each of the claimants in the real property of the company is sufficient in value to confer a vote.

It is undoubtedly true, as was urged at the bar, that the trusts declared by the copartnership are such as that a court of equity would deal with the real property as personalty, so far as was necessary to carry the intention of this trading copartnership into execution. In general there can be no question but that, for all purposes necessary to effectuate the intention of the parties, personal estate may be considered as real, and real estate as personal, by a court of equity, as in the ordinary instance of money agreed or directed to be laid out in land; and so in the instance of real estate under an absolute trust or direction to sell. Against this general rule our decision in the present case will not in any way militate. But notwithstanding this acknowledged doc-

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trine of the courts of equity, no one can deny that the land still remains land, and nothing else; and there is no authority or decision that for the collateral purpose of giving a vote, which has no bearing on or reference whatever to the objects of the deed of copartnership, the right of the *cestui que trust* should not remain just as it would have been without such a declaration of trust. For, as to the declaration by the copartners in the deed, "that the lands and buildings should be deemed and considered as and in the nature of personal estate, and not real estate," we think the generality of such words must necessarily be limited by the subject-matter of the trusts declared by the deed, and that they can extend no further than the objects and purposes of the deed require. And further, we think it may be considered as a very doubtful question, whether the private agreement of parties, or any authority short of an act of parliament, can deprive the owners of the freehold of the right of voting for members of parliament, which is a right inherent in the owners of the freehold, not for their own benefit, but for that of the community of which they form a part.

But however that may be, it appears to us such right is left altogether untouched by the objects and purposes for which the trusts of the deed now under consideration are created and declared. This deed declares no trust whatever of the freehold; but as it appears by the statement in the case, that the land was purchased with the money of the several shareholders or copartners, it follows that under the purchase deed there was a resulting trust as to the fee-simple and inheritance for their benefit, so that each of them would be entitled to his share in the beneficial interest therein, proportioned

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to his share of the purchase money. The partnership deed does not alter the proportions in which the partners are interested, nor does it confer on a stranger any portion of the interest in the land; it only regulates the mode in which the property is to be managed and enjoyed according to the quantity of interest of each shareholder therein, and "the estate" (to use the language of Lord *Eldon* in the case of *Crawshay v. Maule* (a), when speaking of a freehold estate purchased by a partnership for trading purposes), "though personal in enjoyment," is "freehold in its nature and quality;" and it is to the nature and quality of the estate we are to look, and not to the mode of enjoyment, when we have to decide whether it confers a vote.

It was objected on the part of the appellant that the case of *Bligh v. Brent* (b) was an authority against the claimants, inasmuch as it proved that the shares of a company, the profits whereof were derivable from land, were personal property, not real. But we think it sufficient to advert to a broad ground of distinction between that case and the present. In the case referred to, the company, that of the *Chelsea Waterworks*, was a corporation created by an act of parliament and a charter from the crown, of which the individual shareholders were corporators. The whole of the real property was vested in a corporation aggregate, who had the sole management and control thereof, having power to convert it into personalty, or back again into realty at their free pleasure, the individual corporators having, as individuals, no more interest in the freehold than perfect strangers, and no interest in the surplus of profits of the concern

(a) 1 *Swanst.* 521.

(b) 2 *Y. & C.* 268.

till they actually arose. In the present case the freehold is in the trustees for the benefit of individual copartners in a trade to be managed and conducted by a committee appointed by themselves. In many other cases of shareholders in joint stock companies, where the company has been incorporated by act of parliament, the legislature has expressly declared that the shares shall be deemed personal estate, and transmissible as such, and not of the nature of real property. Such was the case of the *Vauxhall Bridge Company* (a), and of the *Lancaster Canal Company* (b), and others, in which cases it may well be conceded that there could be no freehold interest in the several shareholders, so as to entitle them to vote; whereas in the case before us, there is no other than a voluntary declaration by the parties themselves that the real estate shall be considered as personal.

Upon the principle, therefore, that the land and mill built thereon are the basis and subject-matter of the trade out of which the profits arise, which are to be distributed among the shareholders; that the trusts relate only to the management and conduct of the land and mill, and the trade carried on by means of the same; that there is no trust declared which is inconsistent with an equitable interest in the freehold in the respective shareholders; that the copartners are by their committee in possession; and, lastly, that the value of each man's share is sufficient to enable him to vote; we think that the shareholders had an equitable seisin in a sufficient estate to enable them to vote for the county.

As to the objection raised against the right of the two particular claimants, *Bateman* and *Brookbank*, we see

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no ground whatever for considering the money borrowed by the trustees on bond and notes as having the effect of a mortgage on their shares, and, indeed, this objection was little relied on in the argument. Upon the whole, therefore, we think the decision was right, and ought to be affirmed.

Decision affirmed.

# CASES

ARGUED AND DETERMINED

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IN THE

## COURT OF COMMON PLEAS

UNDER THE STAT. 6 VICT. c. 18.

IN

MICHAELMAS TERM AND VACATION,

IN THE

NINTH YEAR OF THE REIGN OF VICTORIA.

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CROUCHER, Appellant, and BROWNE, Respondent. *November 11.*

**G**ROVE moved in this case, and seven other cases of appeal from the decisions of the revising barrister for the city of *London*, for leave to deliver paper books to the Judges. The appeals in question had been entered in time, but no notice had been given of the days on which the Judges would hear registration appeals until late in the afternoon of *Friday*, the 7th of *November*. On *Monday*, the 10th of *November*, paper-books had been tendered to the Judges' clerks, who had refused to receive them, as the first of the days appointed for hearing the appeals was *Thursday*, *November* 13th. The stat. 6 *Vict. c. 18. s. 60.* enacted that all appeals from the revising barristers should be prosecuted according to the ordinary rules and practice of the Court with respect to

The Court allowed paper books to be delivered to the Judges *nunc pro tunc*, when notice had been given late in the afternoon of the 7th *November*, that the Court would proceed to hear registration appeals on the 13th *November*, and the paper-books had been actually tendered to the Judges' clerks on the 10th *November*.

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special cases, so far as the same might be applicable; and consequently it must be allowed that the tender of the paper-books on *Monday* was not strictly within the rule of practice which required that copies of special cases should be delivered to the Judges four clear days before the day appointed for the argument. He submitted, however, that under the circumstances sufficient time had not been given to prepare the paper-books, and prayed that the paper-books might be delivered to the Judges' clerks *nunc pro tunc*.

Application granted (a).

(a) ASHMORE, Appellant, and LEES, Respondent.

*Byles*, Serjt., moved on behalf of the Respondent, for leave to deliver his paper-books to the two junior puisne judges of the Court. He relied upon the same circumstances as those above stated in the principal case.

The Court granted the application.

November 13.

PRUEN, Appellant, and Cox, Respondent.

A notice of objection truly described the objector's place of abode as "No. 398, High Street, Cheltenham," the description of it in the register of voters being "Cheltenham" only. *Held*, that the notice was a sufficient compliance with the form prescribed by 6 Vict. c. 18, s. 7.

AT a Court held before *Henry Singer Keating*, Esq., the barrister appointed to revise the lists of voters for the eastern division of the county of *Gloucester*, *John Surman Cox* objected to the name of *Rayner Winterbotham* being retained upon the list of voters for the parish of *Cheltenham*.

The notice of objection was duly given and was in the proper form; but the objector described his place of abode as "No. 398, High Street, Cheltenham," and as in the register of voters for the parish of *Cirencester*. The name of the objector was in the list of voters for the parish of *Cirencester* in the said division; but his

place of abode as described in that list was *Cheltenham* only. *Cheltenham* is a parish within the said division, and No. 398, *High Street* is within the said parish of *Cheltenham*, and the true place of abode of the objector.

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It was contended that the objector ought to have omitted "No. 398, *High Street*" in the description of his place of abode, and described it generally "*Cheltenham*" only, as it appeared on the register of voters. The revising barrister thought the description sufficient, and, the voter being unable to prove his qualification, expunged his name. If the Court were of opinion that the barrister was wrong, the name was to be restored, as well as the names of sixty other persons, which names he expunged under similar circumstances, and whose appeals were consolidated with that in the principal case.

*Cockburn*, for the appellant. The question for the decision of the Court in this case is, whether the description in a notice of objection of the objector's place of abode must be the same as that which appears in the register. It is submitted that the form given by the stat. 6 *Vict. c. 18. s. 7. Schedule (A) No. 5*, points to the conclusion that they ought to correspond exactly. The form in question concludes with these words: "(Signed) *A. B.* of [*place of abode*] on the register of voters for the parish of ———." [*Maule J.* In the *Cirencester* list the objector's place of abode is described to be "*Cheltenham*," and the notice of objection describes it as "*Cheltenham*," and something more, namely, "No. 398, *High Street*." *Tindal C. J.* Your complaint seems to be, that the appellant was blinded with excess of light.] In *Gadsby v. Warburton*, as reported by Messrs. *Barron*

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and *Arnold*, *Maule* J. is represented to have said (a), "In the form given in the schedule, the words 'place of abode' are in a parenthesis after the signature of the party giving the notice, to shew that the place of his abode is required to be inserted. And it seems to me that the meaning of this form is, that it should be *the place of abode as inserted in the register*, in order to shew that the objector is on the list of voters, it being absolutely necessary that the place of abode of every party entitled to vote should be on the register." *Erle* J. also observed (b), "I am even inclined to think that if the objector retained the same place of abode, and purposely changed the description of it in the notice of objection, by adding the parish or any other particular, it might be invalid." [*Erle* J. I meant, in saying so, such an additional particularity as would create confusion, and mislead the party objected to; not such as gives him additional light. *Maule* J. The language of the seventh section of the act requires that the notice of objection shall be according to the form in the schedule, or "to the like effect." *Tindal* C. J. The notice, as it now stands, is to the same effect as if the objector had signed his name "of *Cheltenham*," and then had added, in a parenthesis at the bottom, "No. 398, *High Street*."] ]

*Byles* Serjt. (with whom was *Grove*), for the respondent, was not called upon by the Court.

*Per curiam* ;

Decision affirmed, with costs.

(a) Vol. I. p. 279.

(b) Id. p. 281. See *S. C.* antè, p. 136.

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BARTON, Appellant, and ASHLEY, Respondent. *November 17.*

THIS was a consolidated appeal from the decision of *Thomas Bros, Esq.*, the revising barrister for the city of *Lichfield*.

At the Court of revision *William Barton* objected to the name of *Thomas Ashley* being retained on the list of persons entitled to vote in the election of members for that city. The objector duly proved the service of a notice of objection upon the said *Thomas Ashley* according to the form No. 11, in Schedule (B) of stat. 6 *Vict. c. 18.*, and he also gave in evidence and proved the service of a notice of objection upon the overseers of the parish of *St. Michael*, in the list of which parish containing the names of persons entitled to vote in the election of members of parliament for the said city, by virtue of the provisions of stat. 2 *W. 4. c. 45.*, the name of the said *Thomas Ashley* appeared as follows; that is to say, "The list of persons entitled to vote in the election of members for the city of *Lichfield* in respect of property occupied within the parish of *St. Michael*, by virtue of an act passed in the second year of the reign of *William* the Fourth, entitled, 'An Act to amend the Representation of the People in *England* and *Wales*.'"

In cities or boroughs where overseers are required to make out two lists of voters, a notice of objection to the overseers must specify the particular list to which the objection refers, even when the name of the party objected to appears in one list only.

Christian Name and Surname in full.	Place of Abode.	Nature of Qualification.	Street, Lane, or like Place in this Parish, Number of House where the Property is situated.
Ashley, Thomas.	Greenhill.	House.	Greenhill.

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The last-mentioned notice of objection was in the following words : — “ Notice of objection to the overseers of the parish of *St. Michael*, in the city of *Lichfield* : I hereby give you notice, that I object to the name of *Thomas Ashley* being retained in the list of persons entitled to vote in the election of members for the city of *Lichfield*. Dated this 25th day of *August* 1845. Signed, *William Barton*, of *Stowe Street, Lichfield*, on the list of freemen for the city of *Lichfield*.”

In the city of *Lichfield* it is the duty of the overseers of the several parishes, and amongst the rest of the said parish of *St. Michael*, to make out and publish two separate lists of persons entitled to vote in the election of members for the said city : the one, in respect of persons entitled to vote in the election of members for the said city in respect of property occupied within the said parish by virtue of the provisions of stat. 2 *W. 4. c. 45.*; and the other, of persons not being freemen entitled to vote in the election of members for the said city in respect of any right other than those conferred by the said last-mentioned statute. The name of the said *Thomas Ashley* only appeared on the first-mentioned list of voters, namely, the list of persons entitled to vote by reason of the provisions of stat. 2 *W. 4. c. 45.*, and did not appear on the other list made out and published by the overseers. In the list of objections published by the overseers, the said *Thomas Ashley* was described as in the original list herein-before set forth. It was objected, on the part of the said *Thomas Ashley*, that the said notice of objection served on the overseers was insufficient, as it did not comply with the directions given in Schedule (B) No. 10, of stat. 6 *Vict. c. 18.*, there being two lists

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of voters made out by the overseers in that parish, and the notice not specifying the particular list to which the objection referred. The revising barrister held the notice to be informal and insufficient for that reason ; but as the said *Thomas Ashley* was present, and then consented that the proof of his qualification should be gone into, subject to the question of the validity of the said notice of objection, he proceeded to call evidence in support of his right to have his name retained in the said list, but failed to prove the same. The question for the opinion of the Court was, whether, upon the facts above stated, the above notice of objection to the overseers of the said parish of *St. Michael* was or was not sufficient in law to call upon the said *Thomas Ashley* to prove his title to have his name retained in the said list. If the Court should be of opinion that the said notice was sufficient, the name of the said *Thomas Ashley* was to be expunged from the register of voters for the said city, otherwise to be retained thereon.

*Kinglake* Serjt. for the appellant. The decision of the revising barrister was wrong. It is contended that the notice of objection served on the overseers was a virtual compliance with the requisitions of the stat. 6 *Vict. c. 18. s. 17.* The 13th section of the same statute directs the overseers to make out two lists of voters in any city or borough where persons, not being freemen, are entitled to vote in respect of other rights reserved by the 33d section of the Reform Act. The 17th section of the Registration Act then provides, that parties objecting shall give a notice to the overseers according to the form No. (10), Schedule (B), *or to the like effect ;* and the objection raised to the validity of the notice in



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this case is, that the objector has not complied with the directions contained in the note at the bottom of the form (a), which states that if there be more than one list of voters, the notice of objection should specify the list to which the objection refers. It is submitted, however, that such a specification is not necessary, unless the name of the party objected to appears in *both* lists, which is not the case here. The name of the respondent appears only in the list of persons entitled to vote as occupiers. Before the statute of *Victoria* passed, the form of the notice of objection to be served upon the overseers was quite general (b), although the overseers were equally bound to make out two separate lists in cases like the present, and it should seem that the words "or to the like effect" in the 17th section of the Registration Act render a strict compliance with the form given by that section unnecessary; *Gadsby v. Warburton*. (c)

The form in the schedule is only directory. In *Wansey v. Perkins (Quigley's Case)* (d), it was held that where the overseers only make out the list of householders in their own parish, a notice of objection to them need not specify the list (though there may be more than one) to which the objection refers; upon the ground that the notice can only apply to the qualification situate in the parish of which they are overseers. The principle of that decision is applicable to the present case, because the name of the respondent was in one only of the two lists which the overseers had made out, and they could not doubt for a moment that the objection was intended to refer to the list in which his name appeared as that of

(a) *Antè*, p. 240.

(b) See the form (No. 5), Schedule (I) of stat. 2 *W.* 4. c. 45.

(c) *Antè*, p. 136.

(d) *Antè*, p. 235.

a person qualified to vote in respect of the occupation of property within the parish of *St. Michael*. Again, in *Allen v. House* (a), which was a case in which the overseers made out two lists, one of householders, and one of potwallers, it was held that the interpolation of the words "as householders" did not vitiate a notice of objection, as it did not appear that the party objected to had been misled by the introduction of those words. Farther, it is submitted that not only was it impossible for the overseers to have been misled, but that they in fact acted upon the notice, and published the name of the party objected to in the way in which it would have been published if the notice of objection had specifically stated that the objection referred to the occupiers' list. [*Maule J.* Then you would say that it is not necessary to prove the service of the notice of objection before the revising barrister.] Not if the name of the party objected to has been duly published by the overseers. [*Maule J.* The fortieth section of the Registration Act provides that a person whose name appears in any list of voters shall not be called upon to prove his qualification, unless the objector shall prove that he gave the notice or notices respectively required by the act. *Erle J.* The thirty-fifth section also enacts that the overseers shall deliver to the barrister the several lists made by them, and also the original notices of claim and of objection received by them.]

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*Byles Serjt.*, for the respondent, was not called upon.

TINDAL C. J. I think the sections of the statute which have been just referred to dispose of that part

(a) Antè, p. 255.

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of the argument founded on a waiver by the overseers. The subject-matter for our consideration, therefore, is reduced to the original question, and it seems to me that the words in the note at the foot of the form No. (10), in Schedule (B), are so clear that it is impossible to misunderstand them. The words are, "If more than one list of voters, the notice of objection should specify the list to which the objection refers" — words which admit of no doubt upon their construction. All that can be said on the other side is, that, in this particular case, the non-observance of the directions contained in the note did not introduce any confusion, but it would be much more convenient to the overseer to have the list pointed out, and it appears to me, therefore, that the form of this notice was improperly conceived.

COLTMAN J. I am of the same opinion. The difference between the present form and that given by the Reform Act, Schedule (I), No. 5, indicates that experience had shewn the legislature that the former notice was not stringent and particular enough, and leads me to conclude that the object of the act was to require additional particularity.

MAULE J. I agree that it is not absolutely necessary to follow the form given in the schedule, if the effect of it be adhered to, but the effect of a compliance with the form in this case would have been that the overseers would have been spared some trouble. When there are two lists, the "like effect" fails, if the overseers are compelled to search both lists for a name which is to be found in one only. It is true that, by some additional

labour, the overseers, with an imperfect notice of objection to guide them, may come to the same result as if they had been served with a notice in perfect compliance with the form in the schedule; but it was the intention of the act to save them that trouble. Suppose the act had said that the volume and page of a particular work should be specified in a notice to the overseer, and the party sending the notice should only mention the volume;—it might be contended that the overseer had nothing to do but to read the volume through, and it would be his own fault if he did not find what he wanted somewhere. The note at the bottom of the form expressly requires that the notice should specify the list to which the objection refers, and I think, therefore, that the notice now in question was bad.

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ERLE J. In my opinion the decision of the revising barrister was right. It seems to me that the statute of *Victoria* is clear in requiring a notice in a particular form, and although it is argued that no inconvenience would follow from its non-observance in this particular case, the relaxation of the rule would lead to very great doubt and inconvenience in future.

Decision affirmed, with costs.

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November 17.

WOOD, Appellant, and The Overseers  
of WILLESDEN, Respondents.

It is a question of fact for the determination of the revising barrister, within the meaning of stat. 6 *Vict.* c. 18. s. 40., whether the qualifying property, on the face of the old register, be sufficiently described for the purpose of identifying it; and the Court will not review his decision.

**A**T a Court holden by *Lancelot Shadwell*, Esq., the revising barrister for the county of *Middlesex*, the name, place of abode, and qualification of *Henry Hall* as a voter in respect of property situate within the parish of *Willesden*, were described in the register for the said county in the following words; (that is to say,)

Hall, Henry.	The Grove, Neasdon, in this Parish.	House and Land as Occupier.	Neasdon.
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This name was objected to by the appellant, and it was proved that the voter's place of abode was at the *Grove, Neasdon*, in the parish of *Willesden*, and that he occupied a house and land at *Neasdon*, for which he was *bonâ fide* liable to upwards of 50*l.* yearly rent; but it was contended by the appellant, first, that the voter's place of abode was not sufficiently described for the purpose of being identified; for that the words in the second column, namely, "*The Grove, Neasdon, in this parish,*" did not specify any particular parish. The revising barrister was of opinion that the words "in this parish" must mean in the parish of *Willesden*, and he overruled the objection.

In the register, the list of voters in respect of property, situate within the parish of *Willesden*, was immediately preceded by a heading in the words "Parish of *Willesden*," and the same words "Parish of *Willesden*" stood as a heading to every subsequent page in which voters in respect of property within that parish were described.

It was also contended by the appellant that the property in question was not sufficiently described for the purpose of being identified, and that the name, either of the property, or of the occupying tenant, ought to have been given in the fourth column. It was shewn that *Neasdon* was not a street, lane, or like place, and that the property was not situated in any street, lane, or like place, but was known by the name of "*The Grove, Neasdon*."

The revising barrister was of opinion that the words "House and land as occupier" in the third column, together with the words "*Neasdon*" in the fourth column, amounted to a sufficient description of the property, and he accordingly overruled the objection and retained the name, with 20s. costs against the objector.

*Cockburn* (with whom was *H. T. Atkinson*), for the appellant. The question for the Court in this case will be, whether the second objection which was taken before the revising barrister was not improperly overruled by him. It is submitted that the description of the situation of the qualifying property in the fourth column was not given with sufficient particularity, and that it ought to have been "*The Grove, Neasdon*," or "*Neasdon*," with the addition of the name of the occupying tenant. The stat. 6 *Vict. c. 18. s. 4.* requires the overseers of every parish to give a notice, on or before the 20th of *June*, calling upon persons entitled to vote in the election of knights of the shire, and not upon the register then in force, to send in their claims to the overseers, following the form No. 2, Schedule (A); and then, by the fifth section, the overseers are required, on or before the last day of *July*, to make out a list of such claimants, according to the form No. 3 in the same

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schedule. The Court has put a construction upon the effect of these two forms in *Eckersley v. Barker*. (a) That case decides that the description of the situation of the property, under the fourth column, should contain the name of the property, if known by any, or the name of the occupying tenant, where the premises are not in a street, or lane, or other like place. It is found in the case that *Neasdon* is not a street, lane, or other like place: and that the property was not situate in any street, lane, or like place, but that it was known by the name of “*The Grove, Neasdon*.”

The Court then called upon

*Arnold*, for the respondents, to support the decision. In the first place, it is not stated in the case that the voter's name was on the list in consequence of any *claim* having been sent in by him. The revising barrister expressly finds that the description in question was in the *register*, which places the question on a different footing from that upon which it has been argued. By the stat. 6 *Vict. c. 18. s. 3.*, the clerk of the peace is directed to deliver to the overseers of every parish in the county his precept, together with certain forms of notices and lists, and *copies of such parts of the register then in force* as shall relate to such parish. The fourth section of the act then provides that the overseers shall give notice to persons not on the register, and to those, who, being on the register, shall not retain their qualification or place of abode as described therein, to send in their claims; by sect. 5. the overseers are required to publish the list of such claimants; and the sixth section enacts that the list of claimants in any parish, and the part of the register relating to that

(a) *Ante*, p. 190.

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parish, shall be deemed to be the list of voters of such parish. There is no section in the act which points out what is to be the heading of the *register*, and *non constat* that the name of the party might not have been upon the register for several years. [*Tindal* C. J. Strictly and properly these lists do not become the register, until they have passed through the hands of the barrister, and have been signed by him. (a) ] Even assuming, for the sake of argument, that the description in the copy of the old register and in the list of claims should be substantially the same, it does not follow that there is any necessity for a slavish adherence to the form No. 3, Schedule (A). It is enough if a sufficient description be given by the whole of the form, taken together, as it appears in the case, and it is immaterial whether that description appears in the third or fourth column. [*Erle* J. Do you not concede too much in putting the list of claims and the old register on a similar footing? The fortieth section of the stat. 6 *Vict.* c. 18. prescribes that “if any person whose name is included in any such list (b), or his place of abode, or the nature or *description of his qualification*, shall, in the judgment of the revising barrister, be *insufficiently described for the purpose of being identified*, such barrister shall expunge the name of every such person from such list, unless the matter or matters so omitted or insufficiently described, be supplied to the satisfaction of such barrister before he shall have completed the revision of such list, in which case he shall then and there insert the same in such

(a) See stat. 6 *Vict.* c. 18. ss. 40, 41, 47, 48, 49.

(b) By “such list” is here intended “list of voters for the parish,” made up of the list of claimants and the copy of the old register.



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list.” It would seem that in the judgment of the revising barrister the description of *Hall’s* qualification must have been supplied to his satisfaction before the revision of the list was completed, or he would have expunged the voter’s name.] The question, then, really before the Court amounts to a question of fact, which the revising barrister has already decided, and his finding upon a question of fact is conclusive. (a)

*Cockburn* was then called upon to reply. The effect of sections 3, 4, 5, and 6 of the stat. 6 *Vict. c.* 18. appears to be this — that the old register shall be taken to be in force as to all those who are not new claimants. There must have been at one time or other a claim made by the party; and as the Registration Act takes up the old register, and makes it, together with the list of new claimants, the list of voters for the parish, it becomes necessary to turn back to the former statute, the Reform Act. The thirty-seventh section of that act requires that a claim to vote for the county shall be made according to the form No. 2, Schedule (H); and in that form the direction is, “*If the property be not situate in any street, lane, or any other like place, then say, ‘Name of the property, Highfield Farm,’ or ‘Name of the occupying tenant, John Edwards.’*” Either the name of the property, therefore, or the name of the occupying tenant, ought at some time or other to have been stated in the notice of claim; and if once a party has got on the register, and some matter appears upon it which would have been open to objection when the list of claimants first appeared, it is not because he has got on the register that the description of the qualifying

(a) See *Hinton v. Hinton*, antè, p. 259.

property shall be taken to be sufficient. The objector has an inchoate right to the proof of every thing which goes to make up a good qualification, otherwise the party might easily elude his researches. [*Maule J.* For any thing we know to the contrary, the party may have given a full account of the situation of the property in the original claim.] The objector has nothing to do with the claim, but only with the list of voters; and it must be presumed that the list of voters would be in conformity with the list of claims. It is submitted that as the act of parliament was made for the guidance of simple and illiterate persons, the yeomanry and tenantry of the county, they should not be required to look at more than the fourth column, in order to see the situation of the qualifying property. The revising barrister had no right to unite the descriptions in the third and fourth columns for the purpose of identifying the property, and it is, therefore, submitted that his decision ought to be reversed.

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**TINDAL C. J.** This appears to me not to be a question of misdescription for the opinion of this Court, but a question of fact for the determination of the revising barrister, namely, whether, on the face of the register, there was sufficient to identify the property. This is not an objection to the claim sent in by the party, neither is it an objection to the list made out by the overseers; in either of which cases there is a precise form pointed out by the Registration Act, Schedule (A) Nos. 2 and 3, and consequently the objection which has now been taken, as to the insufficiency of the description under the fourth column, might have arisen. But the objection here is one which was taken before

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the revising barrister to the description as it appeared upon the face of the register. When the revising barrister sits as judge, he has brought before him so much of the old register as the clerk of the peace has furnished to the different overseers, and also a list of new claims made out by the parties themselves who seek to be placed upon the new register, and transmitted by them to the overseers. These are the two lists in the revision of which his judgment is to be exercised. Now, in order to see what the revising barrister is to do, we must look at the terms of the fortieth section of the stat. 6 *Vict. c. 18*. In the first place, the beginning of that section points out that he may correct any mistake which is proved to him to have been made in any list — that is, any mistake which appears in his mind to have been a *mere* mistake. Then the clause goes on to say that he shall expunge the name of every person whose qualification, as stated in the list, is insufficient in law, which is the main and important object which he has to effect by the revision. Another provision is, that he shall expunge the name of every person who shall be proved to be dead. The clause then goes on to say, that “wherever the Christian name, or the place of abode, or the nature of the qualification, or the local or other description of the property of any person who shall be included in any such list, and the name of the occupying tenant thereof, shall be wholly omitted,” or if they shall, “*in the judgment of the revising barrister*, be insufficiently described for the purpose of being identified,” the barrister shall expunge the name of every such person from the list — leaving it, therefore, a question for the judgment of the barrister whether the particulars in the list are or are

not sufficient to identify the property. Even if they are insufficient in his judgment for that purpose, he is not *absolutely* bound to expunge the name, because the section goes on to say "unless the matter or matters so omitted or insufficiently described be supplied to the satisfaction of such barrister before he shall have completed the revision of such list," in which case he is to insert the name. The section then, after going on to state that there shall be no change in the description of the qualification as it appears in the list, except for the purpose of more clearly defining it, proceeds to say that if the objector appears, and duly prosecutes his objection, the barrister "shall then require it to be proved that the person so objected to was entitled on the last day of *July* then next preceding to have his name inserted in the list of voters *in respect of the qualification described in such list.*" But that leaves it a question for trial, aye or no, before the barrister, whether in the list before him the identity of the premises shall be made out to his satisfaction. Now, on the present occasion, the objection was that the description given in the list was not sufficient to identify the property. The case states that, in the judgment of the revising barrister it was sufficient, and I think that, he having so found, we can see no reason to say that the property was not sufficiently described. In my opinion, therefore, the decision of the revising barrister must be affirmed.

COLTMAN J. I am of the same opinion. We must consider the law as it affects the point reserved, and I see no reason why we should go beyond that. The question arises upon the fortieth section of the stat. 6 *Vict. c. 18.*, namely, whether under the circumstances

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stated in the case, the barrister was justified in saying that the property was sufficiently described for the purpose of being identified. Now, the section itself refers this fact to the judgment of the revising barrister, and if he has formed a judgment upon it, it seems to me that his judgment ought to be conclusive. We ought not to look further and see that there might possibly have been before him some matters which would not have justified him in so holding.

MAULE J. I think, also, that this is not a question of that description upon which the forty-second section of the stat. 6 *Vict. c. 18.* authorized the party dissatisfied with the decision of the revising barrister to appeal to this court. The question which the revising barrister has decided is, that in his judgment the description of the property was sufficient for the purpose of its being identified. I do not think that this question can be decided, except as a question of fact. The only way in which it can be put as a question of law would be this — that the property was described as being a house and land in *Neasdon*, in the parish of *Willesden*. But the description in the fourth column being only “*Neasdon*,” how can we, not knowing what *Neasdon* is, decide whether the description be sufficient or not? Suppose the qualifying property were described as a house situate in “*Oxford Street*,” and it appeared that *Oxford Street* was two miles long, such a description would not be sufficient; but suppose that the house were described as being in “*Oxford Court*,” and it were shewn that there was only one house in the Court, this description would identify the property, which, in the other case, it would not. In my opinion, the court should not review the

decisions of the revising barristers upon such questions as these. I think, therefore, that in this case the decision should be affirmed.

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ERLE J. It appears to me, also, that the decision must be affirmed. The question arises with respect to a name which appears in the copy of the old register. There is no specific requirement in either of the acts relating to this subject, that the name of the property, or that of the occupying tenant, should be in the old register, though there is a requirement that it should be so described in the notice of claim, and in the list of claimants. It cannot be said, therefore, that there is any requirement of a statute which has not been fulfilled. The question turns upon that branch of the fortieth section of the Registration Act which provides that the property shall be sufficiently described in the judgment of the barrister for the purpose of being identified, and the appellant says it is not so sufficiently described. The barrister says, "it is sufficiently described in my judgment," and as it was a matter entirely for his judgment, his finding is conclusive.

*Arnold* applied for costs, on the ground that the overseers were public officers.

TINDAL C. J. No; there has been some difficulty in the question.

Decision affirmed, without costs.

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November 17. WALKER, Appellant, and PAYNE, Respondent.

Where a county voter has no fixed place of abode, the second column in the register, headed "place of abode," may be left blank.

"Travelling abroad," is a sufficient description in the second column, when the party has no fixed place of abode.

It is not an invariable rule, that the party succeeding will be entitled to costs, when one side only has been heard.

AT a Court duly holden by *Lancelot Shadwell*, Esq., the barrister appointed to revise the list of voters for the county of *Middlesex*, the name, place of abode, and qualification of *William Gibbs* as a voter in respect of property situate within the hamlet of *Mile-end, Old Town*, were described in the register for the said county in the following words; (that is to say,)

Gibbs, William.	Travelling abroad.	Freehold house.	32, Heath St.
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This name was objected to by the appellant, and it was proved that the voter was, and for several years had been, travelling abroad, and had no fixed place of abode; but it was contended by the appellant that as no place of abode was given, the name ought to be expunged. The revising barrister was of opinion that as the voter had no fixed place of abode, but was travelling abroad, he (the revising barrister) was not at liberty to expunge the voter's name, and he therefore retained it.

*H. T. Atkinson* for the appellant. The question is, whether the description "Travelling abroad," under the column in the register headed "Place of abode," is sufficient; and it is submitted that it is not. It amounts, in effect, to a total omission of the place of abode, and the barrister, under the provisions of the fortieth section of the Registration Act, ought to have expunged the name, unless the omission had been supplied to his satisfaction before the complete revision of the list. That could not have

been done, because the case finds that the barrister was of opinion that the voter had no fixed place of abode, and it was impossible, therefore, to supply the omission. In the stat. 2 *W. 4. c. 45.*, Schedule (H), No. 8, examples are given in the second column, headed "Place of abode," pointing out the manner in which that column was to be filled up, such as "*Cheapside, London,*" "*Market Street, Lancaster,*" &c.; but these examples are not repeated in the Schedule (A) of the Registration Act, though, the two acts being *in pari materia*, the repealed schedules of the stat. 2 *W. 4. c. 45.*, may be referred to for the purpose of explaining the statute of *Victoria*. The object of the Reform Act in requiring that the voter's place of abode should be mentioned was, to afford means of information as to the identity of the voter, and thus prevent fraudulent personation; and an additional reason for requiring it is to be found in stat. 6 *Vict. c. 18.* The forty-sixth section of that statute empowers the revising barrister to award costs against parties making frivolous claims or objections, and the seventy-first section provides that upon proof that a true copy of the barrister's order for payment of costs "has been served upon, or left at the usual place of abode of the person in the said order directed to pay such sum," a justice of the peace may issue a warrant to distrain for the amount. That section would be inoperative if such a description as "travelling abroad" were held to be sufficient. [*Maule J.* Do you mean to contend that a person travelling abroad has no vote?] He is much in the same situation as an alien or a minor. It is impossible to inquire into the validity of such a person's title to vote. He cannot be served personally with a

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notice of objection, for he is travelling abroad; and the object of the seventh section of the Registration Act, which, to avoid the necessity for personal service, authorizes an objection to leave the notice of objection at the voter's place of abode *as described in the list of voters*, would be entirely defeated, because the direction could not be complied with.

*Phipson*, for the respondent, was not called upon by the Court.

TINDAL C. J. By the fortieth section of the stat. 6 *Vict.* c. 18., it is enacted, that "if any person whose name is included in any such list, or his place of abode, or the nature or description of his qualification, shall, in the judgment of the revising barrister, be insufficiently described for the purpose of being identified, such barrister shall expunge the name." It does not appear from the case, that the revising barrister had any doubt about the identity of the voter. If we were to give way to the present objection, it would follow as a corollary that officers in the army or navy, or any other person travelling abroad on public business, might be disfranchised. It seems to me that the direction in the schedule means that the place of abode shall be inserted, when the party has a place of abode, but it never could have been intended that a man travelling abroad should be deprived of his right to vote because he has no fixed place of residence.

COLTMAN J. concurred.

MAULE J. I also think that a place of abode need

not be inserted when the party has no place of abode. Upon the same ground, it would be unnecessary, although the form in the schedule requires that the Christian name of the party should be stated, to set out a Christian name, if the voter did not happen to be a Christian.

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ERLE J. The statute requires the Christian name and surname of each voter to be inserted, in order to identify him; and also the place of his abode, because that is the locality in which he is likely to be met with. If a party has a place of abode, it should be stated, but if not, then he should give as good a description as he can of the region in which he may be found.

*Phipson* applied for costs, upon the ground that one side only had been heard (a); but the Court did not entertain the application.

Decision affirmed, without costs.

(a) See *Allen v. House*, ante, p. 255.

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November 20.

**HITCHINS, Appellant, and BROWN, Respondent.**

A party whose qualification to vote for a borough was founded on the occupation of two houses in immediate succession, described in his notice of claim, under the third column, the nature of his qualification as "house," pointing out in the fourth column the situation of the two houses in question: *Held*, that such description of his qualification was sufficient, under stat.

6 Vict. c. 18. s. 15., Schedule (B) Form No. 6; as the third column was intended to point out the general nature of the qualification, and the fourth to give a more particular description of it.

*Held* also, per *Coltman J.*, that at all events the revising barrister was empowered, under stat. 6 Vict. c. 18. s. 40., to amend the description in the third column, by inserting therein "houses occupied in immediate succession."

When the revising barrister has found, in a consolidated appeal, that all the cases depend upon the same point of law, the court will not remit the case to him, in order that he may state the qualifications of the parties whose appeals are consolidated with the principal case.

**A**T a Court held before *Graham Willmore, Esq.*, the revising barrister for the city of *Lincoln*, *William Upton* appeared to have given due notice of his claim to have his name inserted in the list of persons entitled to vote in respect of property occupied within the parish of *St. Peter-at-Arches*.

The notice of claim was as follows:—

"To the overseers of the parish of *St. Peter-at-Arches* in the city of *Lincoln*.

"I hereby give you notice that I claim to have my name inserted in the list made by you of persons entitled to vote in the election of members for the city of *Lincoln*, and that the particulars of my qualification and place of abode are stated in the columns below.

"Dated the 23d day of *August* 1845."

Christian Name and Surname of the Claimant at full length.	Place of Abode.	Nature of Qualification.	Street, Lane, or other Place in the Parish or Township where the Property is situate, and Number of the House (if any) where the Right depends on Property.
William Upton.	Muck Lane, Saint Peter-at-Arches, Lincoln.	House.	No. 51, Muck Lane, Saint Peter-at-Arches, Lincoln, and previously in the occupation of a house No. 21, Saint Mary Street in the parish of Saint Mary-le-Wigford, Lincoln.

(Signed) "*William Upton*."

He proved that he had occupied the two houses described in the fourth column of his claim in immediate succession, and had done all other things required by law to entitle him to have his name inserted. The insertion of his name was duly objected to by *James Hitchens*, a registered voter for the said city, on the ground that the nature of his qualification was insufficiently described for the purpose of being identified.

On behalf of *William Upton* it was argued, first, that the description was sufficient; secondly, that if not, the barrister had power to correct the same. The revising barrister decided that the nature of the qualification was not insufficiently described for the purpose of being identified, but at *Upton's* request, he altered the statement, as follows:—

Christian Name and Surname.	Place of Abode.	Nature of Qualification.	Name of Street, &c. where situate.
William Upton.	Muck Lane, St. Peter-at-Arches, Lincoln.	Houses occupied in immediate succession.	21, St. Mary Street, St. Mary-le-Wigford, and 5 <sup>1</sup> / <sub>2</sub> , Muck Lane, St. Peter-at-Arches.

and inserted his name with such alterations in the list.

The case also stated that the validity of the claims of *John Wilson* and nine other parties depended upon the same point as that which occurred in the case of *William Upton*, and that the appeals from the decisions of the barrister in these cases depended upon the decision in the case of *William Upton*, and ought to be consolidated.

*Manning Serjt.*, for the appellant, on a former day (*November 17*), moved for a rule to shew cause why the

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case should not be remitted to the revising barrister, upon the ground that he had neglected to state the particulars of the qualifications of the ten other persons whose cases had been consolidated with that of *Upton*.

TINDAL C. J. The barrister has found that the consolidated appeals depend upon the same point of law as that raised in *Upton's* case. We cannot, therefore, interfere. If there were not enough stated to enable us to give judgment in law, it would be a different matter.

Rule refused. (a)

*Manning* Serjt. now argued the case for the appellant. The objection here is that the word "house" in the third column was an insufficient description of the nature of *Upton's* qualification, and consequently that the barrister had no power to correct the description under the provisions of the fortieth section of the Registration Act. That section enacts, that "whether any person shall be objected to or not, no evidence shall be given of any other qualification than that which is described in the list of voters or claim, as the case may be, *nor shall the barrister be at liberty to change the description of the qualification as it appears in the list, except for the purpose of more clearly and accurately defining the same.*" The point has, in fact, been already decided by the Court in *Bartlett v. Gibbs*. (b) There it was held that where a party founds his qualification upon the occupation of different premises in immediate succession, an omission in the list of any of such premises amounts to a misdescription of his qualification, which the revising bar-

(a) See *Hinton v. The Town-clerk of Wenlock*, *antè*, p. 123.

(b) *Antè*, p. 73.

rister has no power to amend under stat. 6 *Vict. c.* 18. s. 40. [*Tindal C. J.* That case is not in all respects the same as the present. The successive occupation of the premises appears here in the fourth column, while in *Bartlett v. Gibbs* it did not appear any where.] It is submitted that this distinction does not affect the merits of the question. A party examining a long list of voters, for the purpose of ascertaining whether any names have been improperly inserted in that list, ought not to be required to look further than the column headed "Nature of qualification." He is not bound to look to the fourth column to see where the property is situate. [*Erle J.* How can a person, seeing the word "house" in the third column, tell whether a false description of the qualification has been inserted, without looking at the fourth column to see the local situation of the property?] He might be personally acquainted with the claimant, and therefore might be able to detect the mis-statement at once. If any omission, therefore, or mis-statement appear in the third column, the description of the local situation of the property in the fourth column will not cure the defect.

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*Clarke Serjt., contra*, was not called upon.

TINDAL C. J. It appears to me that the description was proper as it originally stood, and that it complies with all the requisitions of the act. The question depends upon the construction to be put upon the fifteenth section of the stat. 6 *Vict. c.* 18., and also upon the form, No. 6, set out in Schedule (B) referred to by that section. The clause provides that every person omitted from the borough lists shall give notice of his

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claim to be inserted therein according to the form No. 6, Schedule (B), or to the like effect. Now, when we look at that form, it appears to me to be quite clear that the third column was intended to point out the *general nature* of the qualification, and the fourth to give a more particular description of it. That appears from the heading of the fourth column, "Street, lane, or other place in the parish [*or township*] where the property is situate, and number of the house (if any)," adding in italics [*when the right depends on property*];" the latter words evidently calling attention to the nature of the qualification, namely, to the claim of the party to vote in respect of property, and indicating that there is another list, which the overseers are bound to make out when parties do not claim a right to vote in respect of property, but in respect of rights reserved by stat. 2 W. 4. c. 45. s. 38. In this case I consider that the requirements of the third column were satisfied by stating a "house" qualification. The nature of the qualification is sufficiently described by the word "house." One cannot suppose that the third column is required to be so precise as the fourth, for, if so, where would be the use of the fourth column at all? As to *Bartlett v. Gibbs (a)*, it seems to me that the difference between that case and the present was not sufficiently adverted to in the argument. *Bartlett v. Gibbs (a)* turned upon the requisites of the fourth, and not upon the third column. The qualification of the voter in that case depended upon the successive occupation of two houses, one in *West Street*, the other in *East Street*. The house in *East Street* only was mentioned in the fourth column, and accordingly it was

(a) *Ante*, p. 73.

held that the fourth column did not properly describe or identify the premises forming the voter's qualification. It seems to me, therefore, that that case was rightly decided, and that we shall decide this case rightly also by holding that there has been a sufficient compliance with the intentions of the act of parliament. One must suppose, as we are bound in charity to suppose, that the objector was a man of ordinary intellect, capable of walking about without assistance, and, therefore, it may fairly be inferred that he obtained from the notice of claim sufficient information as to the nature of the premises, upon which the claimant founded his qualification.

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COLTMAN J. I quite agree with the Lord Chief Justice. In *Bartlett v. Gibbs* (a) the qualification was two houses occupied in succession, and the voter was registered in respect of one house, and one house only. That was evidently an insufficient description. As the claim originally stood in this case, I think it sufficiently answered the purpose for which it was sent in, but, at all events, the barrister was authorized by the fortieth section of the stat. 6 *Vict. c. 18.* to make the alteration which he did. This appears to me to be precisely the sort of case contemplated by that section, which in express terms empowers the barrister to change the description of the qualification as it appears in the list, when the alteration is made "for the purpose of more clearly and accurately defining the same."

MAULE J. I have not heard the whole of the

(a) *Antè*, p. 73.



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argument, but from what I have heard, I see no reason to doubt the conclusion to which the Lord Chief Justice and my brother *Coltman* have come.

ERLE J. It appears to me that the nature or *genus* of the qualification was all that the statute intended should be stated under the third column, and the party requiring more precise information should look into the fourth column for the description of the qualification, the nature of which has already appeared in the third. I am, therefore, of opinion that the objection in this case cannot be sustained, as the statement in the third column "house" seems to me to be sufficient. In *Bartlett v. Gibbs (a)*, the name of the party appeared in the list of voters as entitled to vote in respect of the occupation of a house in *East Street*, but in fact he did not rely on the occupation of the house in *East Street* only, but also upon the occupation of a house in *West Street*. To have inserted the house in *West Street* also would have been a change in the description of his qualification as stated in the list, which the revising barrister is not at liberty to make.

Decision affirmed, with costs.

(a) *Ante*, p. 73.

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NEWTON, Appellant, and The Overseers of  
MOBBERLEY, Respondents.  
NEWTON, Appellant, and the Overseers of  
CROWLEY, Respondents.

November 20.

WHEN these appeals from the decision of the revising barrister for *North Cheshire* were called on in their turn on the 17th *November*, the respondents did not appear. The appellant not being prepared with an affidavit of his having given the respondents ten days' notice of his intention to prosecute the appeal, pursuant to stat. 6 *Vict. c. 18. s. 64.*, the Court allowed the cases to stand over, in order that the appellant might have an opportunity of producing an affidavit of service of such notice.

A waiver by the respondent of notice of the appellant's intention to prosecute the appeal, pursuant to stat. 6 *Vict. c. 18. s. 64.*, will not dispense with the necessity of proving such notice to have been given, before the appeal can be heard.

*Cockburn* now applied for leave to proceed with the appeals, notwithstanding such notice had not been given. He moved upon an affidavit of the managing clerk of the *London* agent to the appellant's attorney, stating that on the 3d of *November* the agent was instructed to enter the appeals, and was at the same time informed by his country correspondent that the attorney for the respondents had consented to waive notice of the appellant's intention to prosecute them. On the 17th *November* the agent wrote to the appellant's attorney, stating that no counsel had appeared for the respondents when the appeals were called on by the Master, and in reply, received a letter from his correspondent, dated *November* 19th, in which the attorney for the appellant mentioned

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that he had written to the attorney for the respondents, expressing at the same time his surprise that no counsel had been instructed to appear, as it had been fully understood between them that counsel would appear on the respondents' behalf. The learned counsel submitted, that as the respondents had consented to waive the notice, the Court might now proceed to hear the appeal.

TINDAL C. J. The question is, whether we are not bound by the stringent words of this act of parliament. The sixty-fourth section enacts, that "no appeal shall be heard by the Court in any case where the respondent shall not appear, unless the appellant shall prove that due notice of his intention to prosecute such appeal was given or sent to the said respondent ten days at least before the day appointed for the hearing of such appeal." It seems to me, therefore, that we have no power to dispense with an affidavit of such notice having been given, although the respondents have waived it. Still, as the proviso which follows these words in the section enables the Court to postpone the hearing of the appeal, "if it shall appear to them that there has not been reasonable time to give or send such notice;" and as it appears that the appellant has been lulled into security by the conduct of the respondents, I think the appeals may, under the circumstances, stand over till the next term. That delay will give the appellant ample time to serve the respondents with notice of his intention to prosecute the appeals.

Appeals to stand over accordingly.

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ASHMORE, Appellant, and LEES, Respondent.

November 20.

**A**T a Court held before *George Hayes, Esq.*, the barrister appointed to revise the lists of voters for the Northern Division of the county of *Nottingham*, a consolidated appeal was reserved for the opinion of this Court upon the following case: —

*James Ashmore* was an inmate of the *Shrewsbury Hospital, Sheffield*, in the county of *York*, and claimed to be a voter for the Northern Division of *Nottinghamshire*, as being entitled, as such inmate, to an equitable life estate or interest in lands and corn rents in lieu of tithes arising from lands in the parish of *Harworth* and the adjoining township of *Styrrup*.

The *Shrewsbury Hospital* was founded in pursuance of the will of *Gilbert, Earl of Shrewsbury*, by *Henry, Duke of Norfolk*, in or about the year 1673, when he erected the hospital at *Sheffield*, and made certain statutes and constitutions for its government. . And in the

In 1680 the Duke of Norfolk conveyed lands and tenements, partly situate in *Yorkshire* and partly in *Nottinghamshire*, to trustees, for maintaining *Shrewsbury Hospital, Sheffield*, and paying the inmates according to certain constitutions. The constitutions ordained (*inter alia*) that there should be one governor and twenty poor persons in the hospital; that the rents of the said lands, &c. should be paid into the treasury of the

hospital; that each inmate should receive out of the monies so paid in, 2s. 6d. a week, and an allowance of coals and clothing; and that whenever the monies in the treasury exceeded 100*l.*, the surplus should be equally distributed among the pensioners.

By a subsequent private act of parliament, it was enacted that, instead of the surplus revenues being thus distributed, additional pensioners should be chosen, and the trustees were directed from time to time to add as many more pensioners as the revenues of the hospital would allow, and also to pay to the pensioners, according to the circumstances of the case, and the exigencies of the times, such fixed stipends as they should think fit, and alter such stipends as they should find requisite, so that the stipends should at no time be reduced below 3s. 6d. a week in money.

The present number of inmates is the same as the number required by the original constitutions of the hospital. The revenues of the hospital arise entirely from real property, and the trustees have no beneficial interest in any part of it. Each inmate receives a fixed stipend of 10*s.* a week. Held, that as the trustees might at any time increase the number of pensioners, and reduce the sum paid to the present inmates to 3*s.* 6d. a week, the inmates had no equitable estate in *Nottinghamshire* of a sufficient value to confer the franchise.

*Semble*, per *Erle J.*, that the inmates had no equitable estate in land, but only an interest in a sum of money.

*Semble*, that the interest of the inmates in the rents received from the estates in the two counties was apportionable.

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year 1680, by indenture, the said Duke, in pursuance of the will of the said Earl of *Shrewsbury*, conveyed certain lands and tenements to trustees for the purpose of maintaining the hospital and paying the inmates and pensioners according to the said constitutions. The hospital has been further regulated by certain private acts of parliament respectively passed in the eleventh year of the reign of King *George I.*, the tenth year of the reign of King *George III.*, and in the fourth year of the reign of King *George IV.*, confirming the foundation of the said hospital and the constitutions thereof, subject to certain changes and modifications duly introduced by and in pursuance of the said statutes.

There are now twenty male inmates of the said hospital, of whom the said *James Ashmore* is one, and as such inmates they occupy and enjoy certain rooms and premises at *Sheffield*, in the county of *York*; but they are not in the occupation of any property in the county of *Nottingham*.

By the said constitutions it is (amongst other things) ordained that in the said hospital there shall be for ever one governor and twenty poor persons, who shall give themselves to the service of God, and to pray for the prosperity of the noble family of the founder and his posterity. And that the said governor and every of them should enjoy such chambers, rooms, and accommodations from time to' time for their lives, together with such stipend and all other allowances as are thereafter to every of them limited and appointed, every one of them well and honestly behaving himself according to the said statutes and constitutions.

It is also provided by the said constitutions that the said Duke of *Norfolk* and his heirs should from time to

time nominate the governor and certain persons who were to be assistants to the governor in the disposal of the revenues of the said hospital, and they were to receive the rents from the collector and lay them up in the treasury of the hospital, and one or more of them were to meet monthly with the governor in the hall, and pay the said inmates their allowances (as thereafter limited and appointed) out of the monies in the treasure house; that is to say, 2s. 6d. a week for each inmate (which sum has since been considerably increased under the powers given by the said acts of parliament), and also to every one in due season two wain loads of pit coals for one whole year's firing. And the assistants appointed were also from time to time to advise and assist the governor in buying the said clothing in such manner as thereafter directed; that is to say, to every man a purple gown in seven years for festival days, and a blue one every two years to be clothed withal.

It was also further provided by the said constitutions that a register should be kept of all the members of the hospital after their regular election. And that the poor men should be widowers or bachelors and threescore years of age or upwards, unless any of them should be particularly dispensed with by the said Duke or his heirs. And that for electing them, the governor and three assistants, or the major part, should, on the death or removal of every poor person, present the names of two persons for every void place to the said Duke or his heirs, to the end that the said Duke or his heirs might elect one or more to the vacant place or places. And that if the Duke or his heirs should neglect to choose within six weeks, the governor and assistants, or the majority, were then to fill up the vacancy or

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vacancies, provided that the said founder or his heirs might, if he or they thought fit, make choice of a poor person qualified according to the statutes without any certificate from the governor and assistants.

It was further provided by the said constitutions that the persons to be elected should be chosen from *Sheffield*, if fit persons were to be found therein, the poor tenants of the founder and his heirs to have the preference; and if proper persons could not be found in *Sheffield*, the said Duke or his heirs might choose any person qualified according to the statutes in any place where the Duke or his heirs had lands descended to him from the said *Gilbert*, Earl of *Shrewsbury*.

The persons to be elected were to be poor indigent people well esteemed of for Godly life and conversation, and of good condition, and peaceable and quiet amongst their neighbours, and such as by persons of honest repute should be judged fit objects of the charity; but if it should so happen by misinformation or mistake that any person should be elected wanting such qualifications as are in the statutes required, or should afterwards marry, or in anywise misbehave themselves, contrary to the said rules and constitutions, that then every such poor person should be removed and expelled by the governor and assistants for the time being, or the major part, and another chosen in his place.

It was further provided by the said constitutions that the said poor persons were to employ themselves in some work and labour according to their abilities. That no one was to lodge with any of the said poor persons, or be admitted to inhabit in their rooms without license as therein mentioned, and that none of the said poor persons should lodge abroad, wander, or beg alms, upon pain of expulsion.

It was also ordained that the gowns belonging to the poor persons should on their deaths go to their successors ; and that in the year when they had no gowns two shirts should be provided for the men.

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It was also provided that if the said poor persons should profanely curse or swear, or frequent taverns or alehouses, or remain there above an hour in a day, or be drunk, or any otherwise misbehave themselves, that the governor and assistants might for a first, second, and third offence impose certain specified fines, to be stopped out of their weekly allowances ; and that if the said offender should be incorrigible, and should not reform his life, then the offender should be expelled ; provided that the governor and assistants, and the Duke or his heirs, might afterwards at their pleasure, by writing, restore the person so expelled.

It was also ordained that what monies should at the end of any year remain over the necessary disbursements thereby authorized should be put into the common treasury ; and whenever it should be found that there remained in the treasury (all necessary charges being defrayed) above 100*l.*, that then all such surplus money exceeding 100*l.* should be equally distributed amongst the poor persons according to the proportion of their allowance.

Certain other particular regulations were made by the said constitutions ; but they are not material to the present case. No power of expulsion was given except those which are above set out.

It was further ordained that the said Duke, any thing therein contained to the contrary notwithstanding, did reserve power to himself and his heirs for ever to alter, dispense with, or repeal at his or their wills or pleasures.



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any of the said statutes, constitutions, and ordinances, and to add such new ones from time to time as he or they in their wisdom should think fit for the better government of the said hospital, provided always that neither the said Duke nor his heirs should divert or diminish any part of the 200*l.* clear yearly revenue which was the minimum amount originally appointed by the will of the said Earl of *Shrewsbury* for the maintenance of the said hospital when he directed the same to be founded.

The hospital as it now exists is governed by the said constitutions as modified by the said private acts of parliament. The material enactments of the said acts of parliament with reference to the present case are, that, instead of having the surplus revenues distributed amongst the original number of pensioners, additional pensioners were directed to be chosen, and the trustees, under the direction of the Duke, were empowered and directed from time to time to add as many more pensioners as the revenues of the hospital would allow (leaving a sufficient surplus for repairs and incidental expenses). And the trustees were, under the directions of the Duke, to pay to the pensioners such fixed stipends as they should think fit (having regard to the revenues of the hospital), and to lessen, increase, vary, change, and alter such weekly stipends as they should find requisite, so that the stipends should at no time be reduced below 3*s.* 6*d.* a week.

The hospital was never incorporated, and the estates from which its revenues arise have always been and are now vested in trustees, to hold the said estates in trust to apply the revenues for the purpose of keeping the hospital in repair, and paying the pensioners their sti-

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pend and allowances of coals and clothing, and also paying the governor's salary and other incidental expenses of the establishment, according to the constitutions as modified by the acts of parliament. The trustees have no beneficial interest in any part of the property. Upon a trustee dying, the Duke of *Norfolk* and his heirs, or, on his default, the surviving trustees, nominate a new trustee.

The revenues of the hospital arise entirely from real property, which is partly in *Yorkshire*, and partly in *Nottinghamshire*. The *Yorkshire* property forms nearly two thirds of the whole in value, and the remaining property is in or arises from *Harworth* and *Styrrup* as described in the list. Such residue consists partly of land belonging to the hospital and partly of corn rents in lieu of tithes arising from land belonging to other parties. The revenues from the different estates of the hospital form one general fund, out of which the expenses of the establishment and the allowances of the pensioners are paid, without any distinction as to the *Yorkshire* or *Nottinghamshire* property.

According to the ordinary usage of the hospital, the pensioners, when chosen, enjoy the benefit of the institution as long as they live. No instance of dismissal appears to have been known.

*James Ashmore*, the person named in the list, was duly appointed an inmate of the said hospital, and as such inmate he receives a fixed stipend of 10s. per week, and also the allowance of coals and clothing according to the constitutions, but neither he nor any pensioner receives any thing beyond the said fixed weekly stipend and allowance.

If this weekly sum and the average annual value of his

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allowance for coals and clothing are to be added together, and are to be considered as arising from the whole of the real estates of the hospital, and to be apportionable between the two counties of *Yorkshire* and *Nottinghamshire*, according to the relative values of the estates in each, the amount of the proportion to be so considered as arising from *Nottinghamshire* would be of sufficient value to entitle him to be placed on the register, provided his interest were in other respects sufficient; but if the value of the coals and clothing is not to be taken into account, then the proportion of the money stipend alone would be insufficient. The original stipend of 2s. 6d. a week, and the subsequently fixed minimum of 3s. 6d. per week would be quite insufficient in any case; and, if the land and corn rents in *Nottinghamshire* are not to be added together in estimating the total value of the *Nottinghamshire* property as described in the list, the value would in no case be sufficient.

On the part of the objector it was contended,

1st. That *James Ashmore* had not a life interest in the emoluments he enjoyed by virtue of his appointment as an in-pensioner of the hospital.

2d. That if he had a life interest in such emoluments, it was not proved that he had any legal or equitable estate in lands or tenements in the county of *Nottingham*, as the whole real estates were in two different counties, and *James Ashmore* was not entitled to require payment of his stipend or allowances or any part of them out of the *Nottinghamshire* property in particular, but that this was a matter in the discretion of the trustees.

3d. That even if he had an equitable estate in the *Nottinghamshire* property, yet as that property consisted partly of lands and partly of corn rents arising from

lands not belonging to the hospital, these two different descriptions of property could not be joined to make up the requisite value for the franchise, each of them being singly insufficient for the purpose.

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4th. That the mere right to receive, as an inmate of the hospital, the said weekly stipend, and the said allowance of coals and clothing (according to the said constitutions and acts of parliament) did not constitute a sufficient equitable estate or interest in the real property, out of the rents and profits of which such allowances were made, to entitle *James Ashmore* to be placed on the register; and that at all events the value of the allowances for coals and clothing could not be taken into account to make up the requisite value.

The revising barrister decided in favour of the objector upon the 2d and 4th grounds, and expunged the names from the register, subject to the present case.

The constitutions and several acts of parliament relating to the hospital were to be read or referred to as a part of the case, if necessary.

*Mellor* for the appellant. The case does not find whether *Ashmore* received his appointment as an inmate of the hospital before or after the passing of the Reform Act, but the case for the appellant may be argued upon the more unfavourable hypothesis, that the appointment was made after that period. In the first place, then, the voter had a life interest in the emolument which he enjoyed by virtue of his appointment; *Simpson v. Wilkinson*, (a). [*Maule J.* There is no appeal to us on that point, as the question has not been reserved by the revising barrister for the opinion of the Court.] The

(a) *Antè*, p. 168.

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objection was taken before him, and by the forty-second section of the stat. 6 *Vict. c. 18.*, he is required to state in writing his decision *upon the whole case*. He has given no opinion upon the first point. [*Tindal C. J.*: He seems to have decided the first and third objections in your favour.] The first question, then, for the consideration of the Court will be, whether the second objection taken before the barrister can be sustained. It is submitted that *Ashmore* had a sufficient equitable estate in lands in the county of *Nottingham* to entitle him to vote for the county. The revenues of the hospital arise entirely from real property, situate partly in *Yorkshire* and partly in *Nottinghamshire*, and the case expressly finds that if the rents may be apportioned, the proportion arising from *Nottinghamshire* would be of sufficient value to confer the franchise upon the inmates, assuming that the weekly stipends of 10s., and the average annual value of the allowances for coals and clothing are to be added together. It is apprehended that the rents may be so apportioned. The inmates are paid out of a common fund, one third of which arises from the *Nottinghamshire* property. It is like the apportionment of a mortgage on an estate in two counties; *Long v. Short* (a); *Elliott on Registration*. (b) Then, as to the fourth objection. It was contended before the revising barrister that the right to receive the weekly stipend of 10s. and the allowance of coals and clothing, did not constitute a sufficient equitable estate or interest in the real property to confer a vote, and that at all events the value of the allowances for coals and clothing could not be taken into account to make up the requi-

(a) 1 *Peere Wms.* 403. *S. C. 3 Vern.* 756.

(b) 2nd ed. p. 84.

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site value. It does not appear from the case upon what precise ground the barrister decided in favour of this objection, but, with respect to the latter branch of it, it seems quite immaterial whether the inmates receive money or money's worth; whether they have a right to hard cash, or that which costs money to buy, and will fetch money if sold. There can be little doubt, however, that the decision of the revising barrister was based upon the impression that the trustees of the hospital had an arbitrary discretion to reduce the amount paid to the inmates of the hospital to the sum of 3s. 6d. a week. In one of the private acts of parliament (a) by which the affairs of the hospital are regulated, it is recited that in the year 1768, a great storm or flood happened at the town of *Sheffield*, whereby a considerable part of the buildings of the said hospital were swept away and demolished, and the statute proceeds to enact that the trustees shall, according to the circumstances of the case and the exigencies of the times, pay to the pensioners such fixed stipends as they shall think fit (having regard to the revenues of the hospital), with full power and authority to lessen or increase, vary, change, and alter such weekly stipends as they should find requisite, so that the stipends should at no time be reduced below 3s. 6d. a week in money. In *Davis v. Waddington* (b), there was no limit to the discretion of the trustees, but the reference made in this act to the casualties which had occurred in the history of the hospital show that it was not intended to confer on the trustees a power which they could arbitrarily exercise. [Coltman J. The trustees are obliged, at the end of the year, to distribute any surplus above 100% among the

(a) 10 Geo. 3. c. lviü.

(b) Antè, p. 159.

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inmates.] That is an additional circumstance to show that they have not an unfettered discretion. They are bound to distribute the money according to the circumstances of the case, the exigencies of the times, and the state of the hospital revenues. It is, moreover, found by the case, that *Ashmore* receives as an inmate of the hospital a fixed stipend of 10s. a week, and it must be presumed, that he will continue to receive that sum during his life, unless there shall be a falling off in the revenues of the hospital, or some extraordinary casualty shall occur. He has a life estate, therefore, of sufficient value, determinable upon a certain event; as *A.* would have a life estate, if an estate were granted to him till he went to *Westminster*. The claimants, therefore, were entitled to be placed on the register, and, consequently, the decision of the revising barrister was wrong.

*Byles* Serjt. for the respondent. The fourth objection taken before the revising barrister is the most material. The main question will be, whether *Ashmore* has an absolute right to receive more than 3s. 6d. a week, besides the allowance of coals and clothing. It is submitted that any further sum which he receives is nothing more than a gratuity, the continuance of which he cannot enforce. The trustees are empowered to increase the number of the pensioners to any amount as far as the revenues of the hospital will permit. There is also a power to the Duke of *Norfolk* and his heirs for ever to alter, dispense with, or repeal, at his or their wills or pleasures, any of the statutes, constitutions, and ordinances by which the hospital is regulated, and to add new ones from time to time, provided that neither the Duke nor his heirs, divert or diminish any part of the

200*l.*, the minimum amount originally appointed for the maintenance of the hospital. Further, the trustees are at liberty, under the direction of the Duke, to pay to the pensioners such fixed stipends as they shall think fit, and to lessen or increase, vary, change, and alter such weekly stipends as they shall find requisite, so that the stipends be not reduced below the sum of 3*s.* 6*d.* It cannot be said, therefore, that the inmates have any right to receive more than that sum, because the trustees are not obliged to pay more. Supposing, however, the Court should entertain any doubt upon that question, it may be necessary to advert to the point raised before the barrister with respect to the allowances of coals and clothing. It is quite clear that the value of the gowns cannot be taken into the account, as the pensioners have only the usufruct of them; and the value of the coals alone will not make up the requisite sum. [*Macle J.* The revising barrister speaks of the average annual value of the appellant's allowance for coals and clothing; that, I suppose, means the average value to the appellant himself.] With regard to the apportionment of the rents, it is conceded that the argument on the other side cannot be satisfactorily answered.

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*Mellor*, in reply. The point on which the case is admitted to turn relates to the power of the trustees to reduce the stipends to 3*s.* 6*d.* a week. [*Erle J.* I want to see how it is that these parties have an equitable estate in land. Suppose the Duke of *Norfolk* had devised all his estates to certain persons, in trust to pay, *inter alia*, 10*l.* a year for life to each of his servants, who had been in his service for three years; I apprehend that these servants would not take an estate in



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land, but only an interest in a sum of money.] It is submitted that, under the seventy-fourth section of the stat. 6 *Vict. c. 18.*, they would be entitled to vote as *cestui que trusts* in actual receipt of the rents and profits. [*Maule J.* referred to *Simpson v. Wilkinson. (a)*] In *Baxter v. Newman (b)*, when the trusts of a partnership deed declared that freehold land, bought for the purposes of the partnership, should be deemed personal estate, and not real estate, it was held that each partner had an equitable freehold interest in the premises, corresponding with the amount of his shares. That is a much stronger case than the present. [*Erle J.* In that case the partners bought the freehold for themselves in the names of the trustees to whom it was conveyed.] Where there is a devise of land in trust to sell it and divide the proceeds, the parties claiming under the will have only an interest in the money; but the devise here is to trustees in trust to receive the rents of the estates, and to pay a portion of those rents to the inmates of the hospital. [*Maule J.* The chief difficulty with which you have to contend is, whether these parties have an absolute right to more than 3*s. 6d.* a week.] The trustees have not an arbitrary discretion to reduce the stipend now paid to that amount, but must exercise it according to the exigencies of the times, and the state of the revenues of the hospital.

TINDAL C. J. The question is now reduced to the single inquiry, whether the amount of the stipend is sufficient on which the claim to vote is founded. That will depend upon the fact whether the claimants are entitled, legally or equitably, to receive a greater sum

(a) *Antè*, p. 168.(b) *Antè*, p. 287.

than 3s. 6d. a week, because it is found by the revising barrister, that if they are not entitled to more than that sum, even if the allowances of coals and clothing be taken into consideration, the proportion left from the *Nottinghamshire* estates would not be sufficient in amount to give them a right to be placed on the register. Now, it seems to me, looking at the original constitutions of the hospital, and the private acts of parliament referred to in the case, that the claimants have no legal or equitable right to receive more than 3s. 6d. a week. Formerly the sum was 2s. 6d. a week, but it was afterwards raised to 3s. 6d., and in consequence of the distribution of the surplus revenue among the pensioners, it is now 10s. a week. But the private act of parliament referred to, and partly set out in the case, 10 G. 3. c. lviii. s. 4., enacts "that out of the surplus of the yearly and other rents, issues, interest monies, proceeds, revenues, and profits, they, the said trustees for the time being, shall, by and under the direction of the said *Edward Duke of Norfolk* during his life, and, after his decease, of such person and persons as hereinafter is and are mentioned, weekly make, answer, and pay to and for the present members of the said hospital and their successors (other than the governor of the said hospital for the time being) such allowances, appointments, payments, and stipends as they the said trustees for the time being, under the same directions shall from the circumstances of the case, or the exigencies of the times, (having due regard to what the yearly income and revenues of the said hospital will afford) from time to time find requisite; with full power and authority to them, the said trustees for the time being, under the same directions, to lessen, increase, vary, change, and alter such weekly allowances,

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payments, and stipends as they shall also find requisite; so as the same allowances, payments, and stipends, shall not at any time be reduced under or below 3s. 6d. a week in money to each of the said members (other than the said governor) respectively." When that provision is coupled with the power given to the trustees to increase the number of pensioners, it is clear, I think, that the inmates have no right to receive any fixed sum beyond the stipend of 3s. 6d. a week.

COLTMAN J. It is not sufficient that a person *receives* rents and profits arising out of land of the value of 10*l.* a year; he should have a *fixed right to receive* that amount before he can become entitled to a vote for the county. Now, in this case, although the appellant has received a stipend of 10s. a week, the amount is liable to be reduced at any time to 3s. 6d. He has therefore no vested and fixed right to any thing beyond 3s. 6d., and upon the finding of the revising barrister that sum is not sufficient to entitle the appellant to a vote.

MAULE J. I think that the revising barrister was right, upon the ground that the appellant had no legal or equitable estate of a sufficient value to confer the franchise. It is found that he had not such an estate, unless his right or interest in the emoluments which he enjoyed by virtue of his appointment was such as to constitute a right to receive more than 3s. 6d. a week. I think he has no such right, because the payment of a larger sum is subject to the discretion of persons over whom he has no control.

ERLE J. It appears to me, also, that, whatever may be the nature of the equitable estate of which these

parties claim to be seised, the value was not sufficient. All that the parties are *certainly* entitled to is 3s. 6d. a week, for the trustees have power to add from time to time as many more pensioners as the revenues of the hospital will allow.

Decision affirmed.

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## MICHAELMAS VACATION.

BISHOP, Appellant, and HELPS, Respondent.

December 23.

**T**HIS was an appeal from the decision of *Henry Singer Keating*, Esq., the revising barrister for the eastern division of the county of *Gloucester*.

*Henry Bishop* objected to the name of *John Cooke* being retained upon the list of voters for the parish of *Corse*, in the said county. The objector, who resided at *Cheltenham*, produced duplicates of notices of objection in the proper form to the voter and overseers of the parish, bearing the *Manchester* post mark of the 24th day of *August* 1845, and proved that in the ordinary course of post those notices would have been delivered at the places to which they were respectively addressed sometime on the following day. The notices were not delivered at those places respectively until the 27th day of *August*, and had the post mark of the 27th at the places to which they were addressed also impressed upon them. It was objected on the part of the voter that the objector had not given the notice required by the statute 6 *Vict. c. 18. s. 7.* in due time, either to the voter or the overseers. The barrister retained the name upon the list, and also,

The production of a stamped duplicate notice of objection, under stat. 6 *Vict. c. 18. ss. 7. 100.*, is *conclusive* evidence that the original notice reached the party objected to on the day on which it would have been delivered in the ordinary course of post.

So also, with respect to a notice of objection sent by post to the overseers, pursuant to s. 101.

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upon a similar state of facts, the names of thirteen other persons, whose several appeals depended upon the same decision.

If the Court should be of opinion that both the notices were given in due time, as required by the statute, the names were to be expunged; but if either of the notices was not so given, then the names were to be retained.

The case was argued (in *Michaelmas* term, November 13th) by

*Talfourd* Serjt. for the appellant. The single question in this case is, whether an objector, who has complied with all the requisitions of the stat. 6 *Vict. c. 18.*, so far as they apply to the sending of notices by post, and the proof of such notices having been delivered, is entitled to rest his case upon the fact that he has done so; or whether, assuming such compliance to be *prima facie* evidence of the receipt of such notices, it is still competent to the party objected to to shew that, by some default or neglect on the part of the post office, the notices did not in fact reach him or the overseers, until after the time specified in the statute. The seventh section of the stat. 6 *Vict. c. 18.* requires a notice of objection to be given to the overseers, and also to the party objected to, on or before the 25th day of *August*. The 100th section of the statute then provides that whenever any person shall be desirous of sending any such notice of objection by the post, the production of a stamped duplicate of the notice *shall be evidence* of the notice having been given to the person at the place mentioned in such duplicate on the day on which such notice would, in the ordinary course of post, have been

delivered to such place. Then comes the 101st section, which enacts that whenever any notice is required by the act to be given or sent to the overseers of any parish, *it shall be sufficient* if such notice shall be sent by the post; and that wherever any notice is required to be given or sent to any person or persons whatsoever, or public officer, *it shall be sufficient* if such notice be sent by the post in the manner and subject to the regulations therein-before provided. The question, therefore, comes to this — whether the production of the stamped duplicate shall, or shall not, be *conclusive* evidence of the due delivery of the notices in both cases. In the case of notice of dishonour of a bill of exchange, the question would be whether the party sending it had done all in his power to give due notice; and proof that he had put the letter containing the notice into the post office in proper time would be sufficient evidence of the notice having reached its destination. (a) It is contended that the scope and object of the provisions of this act were to promote the general convenience, by giving to the stamp of the post office a greater effect than it usually carries with it, and thus simplifying the mode of proof. The legislature had a similar object in view when it enacted that, in the case of newspapers, the production of a certified copy of the declaration required to be made before the newspaper can be published shall have the same effect for the purposes of evidence as the original declaration. (b) The argument of inconvenience to the party and the overseers, in consequence of the notices not arriving in time, ought not to weigh against the express words of the statute. In

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(a) *Acc. Stocken v. Collin*, 7 M. & W. 515.

(b) See stat. 6 &amp; 7 Will. 4. c. 76. ss. 6, 8.

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*Allan v. Waterhouse* (a), the Court held that a postmaster's managing clerk might discharge the duty of comparing and stamping the duplicate notices of objection, instead of the postmaster, without affecting the validity of the post-office stamp. So in *Cuming v. Toms* (b), *Tindal* C. J. said, "When the duplicate is produced, the whole faith and credit which is attached to it is given to the stamp of the postmaster." [*Maule* J. The objection against your construction of the act is, that the stamp would be proof of something of which the contrary appears.] It is submitted that the general convenience will be consulted by adhering to the plain words of the statute, and substituting, in accordance with the object of the act, the simple machinery of the post-office stamp for the troublesome and expensive modes of proof to which parties objecting were formerly obliged to resort.

*Byles* Serjt. (*Grove* with him) for the respondent. It is submitted that neither the notice to the voter, nor the notice to the overseers, was given in due time. With regard to the notice to the voter, much stress has been laid on the other side upon the word "sufficient," which appears in the 100th section of the Registration Act. But that word may mean simply "prima facie evidence," and the words "sent by the post," clearly do not imply "put into the post," but "effectually transmitted by the post." The argument for the appellant is much more assisted by the words contained in a subsequent part of the clause, which says that the "production of such stamped duplicate shall be evidence

(a) *Antè*, p. 92.(b) *Antè*, p. 155.

of the notice having been given to the person at the place mentioned in such duplicate on the day on which such notice would, in the ordinary course of post, have been delivered to such place." But the act does not say "it shall be *conclusive evidence*," and it can hardly be doubted that if it had been the intention of the legislature to render it "conclusive," that word would have been inserted. Thus, in the seventy-ninth section of the statute it is provided that the register shall be *conclusive evidence* of the voter's retaining the same qualification. And the stat. 6 & 7 W. 4. c. 76. s. 8. uses the same phraseology, enacting that certified copies of the declarations made and signed by publishers of newspapers, shall be admitted "as conclusive evidence of the truth" of the matters set forth in such declarations. It is submitted, therefore, that the words "shall be evidence" are to be construed in their ordinary sense, and not as meaning that such evidence shall be *conclusive*. If that be so, the voter was not precluded from shewing that, in point of fact, the notice was not delivered to him till the 27th of *August*. Then, as to the notice to the overseers. There is no proof whatever of any notice having been given to them. Under the 101st section of the act, containing provisions as to the service of notices on overseers, the notice might have been delivered to one of the overseers personally, or it might have been left at his place of abode, or at his office or other place for the transaction of parochial business. If not found convenient to serve it in either of these modes, it might have been sent by the post, addressed to the overseers of the particular parish, naming the parish and the county to which the notice related, without adding any place of abode. Now, it does not appear

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in this case in what manner the notices to the overseers were directed. [*Erle J.* The only point to which the revising barrister has called our attention is, the question of *time*. *Tindal C. J.* The barrister finds that the notices of objection were “in the proper form.”] There are several proper forms of address; but it does not appear in *which* form the notice was directed to the overseers. The stamped duplicate is the only evidence of the fact that the notice reached the overseers, and that is no evidence at all, because the regulations contained in the 100th section as to duplicates do not apply unless the original notice be directed to the party at his place of abode. [*Maule J.* It appears to me that we can only consider whether the notices were given in due time.] They were not given in due time unless they were properly *sent*. That word is explained by the eighth section, which provides that the overseers shall publish a list of all persons “against whom notice of objection shall have been *given* to them.” So again, in the instructions contained in the “precept of the clerk of the peace to the overseers,” of which the form is given in Schedule (A), No. 1, it is said, “You are to make out a list, according to the form numbered 6 (herewith sent), containing the name of every person against whom a notice of objection shall have been *given* to you or any one of you, on or before the 25th day of *August*.” The word “given,” therefore, is to be read in conjunction with the word “sent” in the 101st section, shewing that it was intended that the notice should be so sent as to reach the hands of the overseers.

*Talfourd Serjt.* replied.

. *Cur. adv. vult.*

TINDAL C. J. now delivered the judgment of the Court.

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In this case, which was an appeal from the decision of the revising barrister for the eastern division of the county of *Gloucester*, the question reserved by him for the opinion of the Court was, whether the notices of objection to the party who claimed the right to vote, and to the overseers, were given in due time. The notices were proper in point of form, and were duly delivered to the postmaster in such time as that by the ordinary course of the post they would have been delivered at the places to which they were respectively addressed some time in the day of the 25th of *August*; but, in point of fact, they were not delivered at such places until after that day: so that the question is limited to the sufficiency of the notices in point of time. Two questions were raised in the argument before us; one with respect to the notice to the party objected to; the other with respect to the notice to the overseers. We will first consider the case of the notice to the party objected to.

The act 6 *Vict. c. 18.*, by the seventh section, requires a notice of objection to be delivered on or before the 25th of *August*. The 100th section enacts that, in case of notice to a person objected to, it shall be "sufficient," if the notice shall be sent by the post, free of postage, directed to the person to whom it is sent at his place of abode, as described in the list of voters; and that wherever any person shall be desirous of sending such notice by the post, he shall deliver the same, duly directed, open and in duplicate, to the postmaster of a post office where money orders are received or paid, within such hours as shall have been given notice of,

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and under such regulations with respect to the registration of such letters as shall be made by the postmaster-general. The act then directs the postmaster, on payment of the fee for registration, to compare the notice and duplicate, to forward one, and to return the other to the party bringing it. It then provides that the production of a stamped duplicate, by the party who posted such notice, shall be evidence of the notice having been given to the person mentioned in the duplicate on the day on which such notice would, by the ordinary course of post, have been delivered to such place.

It was argued on the part of the respondent, that the true construction of this section was, that it shall be sufficient if the notice was effectually sent, that is, *sent and delivered*. And there is no doubt that this would be sufficient; but it would, at the same time, be unnecessary to have this provision, which is a very special one, in order to make such a sending sufficient. For there is no doubt that any sending and delivery, by a servant or otherwise by which the notice came to the voter, would be sufficient by sect. 7. It is therefore evident that some privilege is meant to be conferred by sect. 100 on a mode of dealing with the notice which is so carefully provided for. The notice must be posted at a select description of office within certain hours; the postage must be paid; it must be registered, and the fee for registration paid; it must be delivered to the postmaster open and in duplicate, compared, stamped, and the duplicate returned. And we think the meaning of the act is this; when all these conditions are complied with, such a sending shall be a sufficient substitute for what the seventh section required to be done; that

is, a sufficient substitute for giving the notice to the person objected to, or leaving it at his place of abode.

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It was probably considered that the public convenience would be promoted by the present provision, and that its advantages would greatly outweigh the inconvenience which in some few cases might possibly arise from it. Indeed, in the case of leaving notices at the place of abode, it may possibly happen that, without any fault of the party objected to, the notice may be lost or destroyed, or simply not delivered through the negligence of a servant, and so never come to his knowledge; and yet there can be no doubt this would be a sufficient delivery. And, perhaps, such a miscarriage under sect. 7 may be of as probable recurrence as the non-delivery of a notice posted according to sect. 100 of the act.

If this is the true construction of that part of the section, which provides what *sending* is sufficient, it follows that the objector has done all that the act requires him to do, to enable him to call on the voter to prove his right, whether the notice arrived or not, and whether it was prevented from arriving by insufficient description of the place of abode, or by default of the post office. So that, supposing, as it was insisted for the respondent, that the evidence of the stamped duplicate is not conclusive as to arrival, and was answered by proof of the contrary, as it was here, it makes no difference as to the right of the objector, as the fact so disproved is not material to his right. The stamp on the duplicate is clearly evidence of the posting on the 24th, and there was no contradiction as to that fact; so that (whatever might be the consequence if it had been shewn in evidence that the notice was not really *posted* on the 24th),

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as the proof stood, all the facts constituting a sufficient *sending* were proved without contradiction.

It was objected, secondly, with respect to the notice to the overseers, that such a notice was not within section 100, which applies only to notices to persons objected to; and that section 101 did not help it, as that section says nothing of a duplicate being evidence; so that as there was no proof of notice to the overseer, except the stamped duplicate, no notice was in effect proved. But it appears to us that the clause in section 101, which provides "that, wherever by this act notice is required to be given or sent to any person whatsoever, or public officer, it shall be sufficient if such notice be sent by the post in the manner and subject to the regulations hereinbefore provided, with respect to sending notices of objection by the post, free of postage, addressed with a sufficient direction to the person to whom the same ought to be sent at his usual place of abode," affords a sufficient answer to this objection. For it seems to us that this clause applies all the provisions in section 100 as to notices to persons objected to (including that provision which requires the notice to be delivered open and in duplicate to the postmaster; and that the postmaster shall stamp and return one part, and its necessary consequence that such stamped duplicate shall be evidence of the time of posting and of delivery,) to all notices to overseers directed to them at their usual place of abode; and as nothing appears upon the case stated, and no question was made respecting the address of the notice to the overseers, we think the notice to them falls within the same rule as the notice given to the party objected to. It appears, therefore, to us that both the notices of objection were given

in due time, and consequently that the decision of the revising barrister must be reversed.

Decision reversed. (a)

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(a) BISHOP, Appellant, and Cox, Respondent.

THIS was an appeal from the decision of the same revising barrister, upon the revision of the list of voters for the parish of *Boddington*. The facts were precisely the same, and the same counsel appeared on both sides.

The appeal was not argued, but it was agreed that it should be determined by the decision in the principal case.

Decision reversed.

The following cases may be conveniently added here : —

HICKTON, Appellant, and ANTROBUS, Respondent.

[1846.]  
Hilary Term,  
January 19.

THIS was an appeal from the decision of *William Charles Townsend, Esq.*, the revising barrister for the southern division of *Cheshire*.

The points raised were the same as in *Bishop v. Helps*, and the revising barrister held that the notices were delivered too late.

*Cockburn* (with whom was *Kinglake Serjt.*) for the appellant.

*Welsby* for the respondent, admitted that he could not distinguish the case from *Bishop v. Helps*.

Decision reversed.

BAYLEY, Appellant, and the Overseers of NANTWICH,  
Respondents.

January 29.

THIS was also an appeal from the decision of the revising barrister for *South Cheshire*.

The case stated that the appellant, together with twenty-four other claimants whose cases were identical, and were consolidated with the present appeal, resided at *Nantwich*. A notice of claim, purporting to be signed by the appellant, was proved to have been posted at *Manchester* on the 19th *July*, and, according to the ordinary course of post, should have arrived at *Nantwich*, and been delivered to the overseers, on the 20th of *July*. It was not, in fact, delivered till the 22d, and the revising barrister held that the claims were not duly made or transmitted.

A stamped duplicate notice of claim is conclusive to shew that the original notice of claim was delivered to the overseers in the ordinary course of post.

*Cockburn* (with whom was *Kinglake Serjt.*) for the appellant, (*January 19*).

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The judgment of the Court renders it unnecessary to report the arguments.

The case was remitted to the revising barrister, and having been amended and returned by him,

TINDAL C. J. now delivered the judgment of the Court. This case had been referred back to the revising barrister, to certify whether any objection was made before him as to the address of the notice of claim to the overseers of *Nantwich* being the proper address; and he has certified to us that no such objection was made; that it was admitted, that all the provisions in sections 100 and 101 of the Registration Act had been complied with, and that the sole point referred to us was, whether the duplicate notice of claim, properly stamped, was sufficient evidence of the claim being in time. This point is decided in the case of a notice of objection, and we think there is no distinction to be taken in this respect between a notice of objection and a notice of claim.

We, therefore, think that the decision of the revising barrister is wrong, and that the same must be reversed, and the names of the twenty-four claimants be retained on the lists.

Decision reversed.

# C A S E S

ARGUED AND DETERMINED

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IN THE

## COURT OF COMMON PLEAS

UNDER THE STAT. 6 VICT. c. 18.

IN

HILARY TERM AND VACATION,

AND

EASTER TERM,

IN THE

NINTH YEAR OF THE REIGN OF VICTORIA.

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FOUNDER, Appellant, and DONNER, Respondent.

January 15.

**T**HIS was a consolidated appeal from the decision of *Stephen Temple, Esq.*, the revising barrister for the borough of *Scarborough*, who stated the following case:

The appellant and seven other persons claimed to be inserted in the list of the said borough, in respect of a successive occupation of houses. A list of claims containing the names in question had been duly published by the overseers, and in that list the name and descrip-

Where the qualification of a claimant to vote for a borough consists of two houses occupied in immediate succession, the number of each house, if numbered, should be stated in the notice of claim, and in the list of claimants.

Therefore, where a claimant, so qualified, had only inserted in his notice of claim the number of the house secondly occupied, and the barrister decided that the omission of the number of the first house in the list of claimants disentitled the party to be inserted in the list of voters, *Held*, that the decision was right.

*Semble*, per *Erle J.*, that if the number had been supplied to the satisfaction of the barrister, he ought to have inserted it in the list.



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perty, were as follows : —

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Christian Name and Surname of each Claimant at full Length.	Place of Abode.	Nature of Qualification.	Street, Lane, or other Place in this Parish (or Township) where the Property is situate, and Number of the House, if any.
Flounders, John.	15, Aberdeen Walk.	House.	Aberdeen Walk. 15, Aberdeen Walk.

The above description is an exact copy in all respects of the notice of claim sent in by the said *John Flounders* to the overseers. The place secondly mentioned as the situation of the house, namely, 15, *Aberdeen Walk*, is the situation of the house which he at present occupies ; and the street or place where the said houses are stated to be situate is well known, and is not so extensive or populous but that any occupier of any premises in it may be found by reasonable inquiries. Both the houses constituting the qualification are and have always been numbered. The name of the said *J. Flounders* was opposed, on the ground that the number of the first house was not inserted in the list, agreeably to the form prescribed by the stat. 6 *Vict. c. 18. Schedule (B), No. 3*, nor in any claim sent to the overseers by him agreeably to the form No. 6 of the same schedule. The barrister decided that *J. Flounders* was not entitled to be inserted in the list of voters for the said borough, on the ground that the statute required that the number of each house constituting the qualification should have been contained in the column describing the situation of the property.

*Wharton* for the appellant. The revising barrister ought to have amended the description in the list, by

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adding the number of the first house which was occupied by the appellant. The fortieth section of the stat. 6 *Vict. c.* 18: empowers the barrister to change the description of the qualification for the purpose of more clearly and accurately defining it; and the 101st section provides that no inaccurate description of any place described in any list of voters shall prevent the operation of the act, provided the place be so denominated in the list as to be commonly understood; *Wood v. The Overseers of Willesden (a)*. [*Tindal C. J.* In that case the revising barrister found that the description was sufficient. Here it is not even stated that he was asked to make any correction. *Cresswell J.* The question which the revising barrister has raised is, whether the claimant ought to have inserted the number of his house; you must therefore confine your argument to that point.] Then it is submitted that it was not necessary to insert the number, as the house was sufficiently described for the purpose of identification. [*Cresswell J.* It is found that there was no number to the house; but the case does not find that the house was sufficiently described for such purpose.] The Court will look into the facts to see whether the decision of the revising barrister was correct. In *Gadsby v. Warburton*, where the point raised was, "whether the description of an objector's place of abode, as stated in the notice of objection, was sufficient, it was said by *Maule J. (b)*, "It appears to me, that although the barrister has found that the notice was not sufficient, it is yet a matter of law whether the facts which he has stated for the opinion of this Court warrant the conclusion at

(a) *Antè*, p. 314.(b) *Antè*, p. 140.

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which he has arrived." In *Bartlett v. Gibbs* (a), and *Daniel v. Camplin* (b), the number of the house was not stated; but in neither of those cases did the revising barrister object to the sufficiency of the description upon that ground. Sufficient appeared here to identify the premises, and no more was necessary. The case finds that the street or place where the houses are situated is well known, and is not so extensive or populous, but that any occupier of any premises in them may be found by reasonable inquiries. It is enough if the description given comply substantially with the forms in the act. In *Rex v. Hall* (c) Abbott C. J. observes, "The meaning of particular words in acts of parliament, as well as other instruments, is to be found not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used, and the object that is intended to be attained."

*Bliss* for the respondent. The only question here is, whether the statute requires that the number of each house, constituting the qualification, should be stated in the list. Now the stat. 6 *Vict. c. 18. s. 15.* expressly says, that the list of claimants shall be made out by the overseers, according to the form numbered (8) in Schedule (B), and the words "and number of the house (if any)," in the fourth column of that form, must have some meaning. Those words are not found in the corresponding form given by the Reform Act (d), and the insertion of them in the Registration Act is the

(a) *Antè*, p. 73.(b) *Antè*, p. 264.(c) 1 *B. & C.* 136.(d) 2 *Will. 4. c. 45. Schedule (I), No. 6.*

more significant. It is argued on the other side, that a substantial compliance with the form is sufficient; but the words "to the like effect," in the fifteenth section of the stat. 6 *Vict. c. 18.* do not follow the reference to the form No. 8, though they are added when the forms Nos. 6 and 7 are referred to in that section. Assuming, however, that this were the case of a notice of claim, there would not be a substantial compliance with the form prescribed by the act. The words "to the like effect" mean, where something has been put instead of a number, as if a house were distinguished by a letter of the alphabet, or by a sign, as "the *Golden Fleece*." Again, it has been contended, that the 101st section of the stat. 6 *Vict. c. 18.* cures the omission of the number of the house, but there is no "inaccurate description" here, but a *misdescription*, because, if no number be stated, it leads to the conclusion that the house is not known by any number. Then, as to the argument derived from the statement in the case that any occupier of premises in the street may be found by reasonable inquiries. This is the case of a party who has successively occupied *two* houses, and who has, therefore, ceased to be an occupier of the house in question. It may be easy to find an *occupier* of premises, but not so easy to discover a party who has left them. In *Eckersley v. Barker (a)*, the Court held that, in describing the situation of qualifying property for a county, the number should be given, if the houses in a street are numbered. So, in *Dewhurst v. Fielden (b)*, Tindal C. J. in delivering his judgment, drew an argument from the fact, that the number of the house was required to be stated by the form No. 3, Schedule (B)

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(a) *Antè*, p. 190.(b) *Antè*, p. 277.

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in the Registration Act. The object of the statute in requiring compliance with the forms given in the schedules was to facilitate inquiries, and if they are allowed to be departed from, parties may, with impunity, indulge in fanciful descriptions, in order to throw every possible obstacle in the way of investigation.

*Wharton*, in reply, urged that the decision of the revising barrister appeared to have been grounded upon a doubt of his having the power to insert the number of the house.

TINDAL C. J. I think the decision in this case was right. The barrister has decided that the claimant was not entitled to have his name inserted in the list of voters, upon the ground that the statute required that the number of each house should have been stated; and such, I think, is the proper construction of the act, taken in connection with the form which it prescribes should be followed. The moment the Court held that it was not sufficient, in the case of successive occupation, to describe one house only, but that it was requisite to give the description of all the premises which together made up the qualification, it followed, as a necessary consequence of that decision, that, if the number were required to be stated, in describing one house, it was equally necessary to state it in describing the other. A man's present residence is much more readily found than a former one. I think, therefore, it was necessary to state the number of the first house. One answer endeavoured to be given was, that the revising barrister had stated facts from which it could be seen that he was in doubt as to whether he had the right to amend or not,

and that, therefore, the Court should make the amendment for him. But the fortieth section of the statute of *Victoria* appears to me to apply only to a case where the revising barrister, not feeling satisfied with the identity of the premises, expunges the name, and afterwards evidence is given to his satisfaction of the identity. We ought, therefore, to see that the revising barrister has been satisfied by evidence what the number of the first house was ; but, as far as the statement in the case goes, it does not appear that he was so satisfied, because he has expunged the name of the claimant. Then the 101st section appears to me to be quite as far removed from the present subject-matter of inquiry, for there the provision is, that no misnomer or inaccurate description of any person, place, or thing shall prevent or abridge the operation of the act with respect to such person, place, or thing, provided that such person, place, or thing shall be so denominated as to be commonly understood. How are we to say that the house in question is so denominated in the list as to be commonly understood ? There may have been a hundred, or but a few houses in *Aberdeen Walk*, and we cannot, therefore, say, without some certain information, that the description of the first house was such as to be commonly understood. Besides, I think the words "commonly understood" mean some clumsy description which, nevertheless, might point out the particular qualification relied on ; and, for these reasons, I am of opinion that the decision of the revising barrister is right.

MAULE J. As far as I have heard the argument, I entirely agree with my Lord Chief Justice.

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CRESSWELL J. I am of the same opinion. The schedule requires the number of the house to be stated in the list, and consequently the directions given by the act have not been followed. Then the fortieth section says that, whenever the nature of the qualification, or the local or other description of the property of any person shall be wholly omitted, or shall, in the judgment of the revising barrister, be insufficiently described for the purpose of being identified, he shall expunge the name of the person from the list, unless the matter so omitted or insufficiently described be supplied to the satisfaction of such barrister before he shall have completed the revision of such list, in which case he shall insert the same in such list. Now, would the description given of the first house in the list of claimants enable any one to identify it? Suppose a party inquired, and were told that the claimant had never lived in the street at all, how would the description in the list enable him to identify the house? Then, again, it does not appear that any evidence was offered to supply the number of the house, much less that it was supplied to the satisfaction of the revising barrister. With respect to the 101st section, all the effect of the provision which has been referred to is, that when every thing required by the act can be inferred from the description, it will suffice. The description must be such as to be commonly understood, and in this case there is nothing from which one could understand any thing about the house.

ERLE J. It appears to me that the decision must be affirmed. It is clear the revising barrister had a right to expunge the name from the list of claimants if he thought

the description insufficient, and if the number of the first house were not supplied to his satisfaction. But if the number were so supplied, then he had the power to insert that number, and it was his duty to do so; and if the question intended to be raised was, whether the barrister had such a power, it is very much to be regretted that the case was not so drawn up. All that the case finds is, that the number was omitted, and, the revising barrister having exercised his discretion, and expunged the name, I can see no ground for reversing his decision.

Decision affirmed.

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RAWLINS, Appellant, and The Overseers of  
WEST DERBY, Respondents.

January 15.

**A**T a court held before *Thomas Horncastle Marshall*, Esq., one of the barristers appointed to revise the list of voters for the southern division of the county of *Lancaster*, the overseers of the township of *West Derby* objected to the names of *George Atkinson* and of thirty-seven other persons being retained in the list of claimants to vote in the said township. The barrister struck out the names of the said claimants from the said list, subject to the opinion of the Court of Common Pleas on the following case:—

All the said claims were delivered at the dwelling-house of one of the overseers of the said township of *West Derby*, in his absence, about nine o'clock in the

If the 20th of July falls on a Sunday, service on that day of a notice of claim upon an overseer is sufficient, within the meaning of stat. 6 Vict. c. 18. s. 4.

Where a respondent appears, he cannot object to the form of the notice of intention to prosecute the appeal, given under s. 62.



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evening of *Sunday*, the 20th of *July* last. The overseers, nevertheless, published such claims in the list of claimants, but inserted opposite to each name the word "objected," and at the revision of the said list, contended that such service of the said claims respectively was insufficient and invalid, having been made on *Sunday*, and, the following day being too late by law for the service of such notices, that such claimants, therefore, were not entitled to have their names retained in the said list. The barrister allowed this objection, and directed *Rawlins* to be the appellant, and the overseers of *West Derby* to be the respondents in a consolidated appeal.

*Arnold*, for the respondents, submitted that there was a preliminary objection to the hearing of the appeal, inasmuch as the notice sent by the appellant of his intention to prosecute the appeal, pursuant to stat. 6 *Vict.* c. 18. s. 62., was headed "*Edward Rawlins* appellant, and *Thomas Augustus Granville Dolling*, overseer of *West Derby*, respondent." Due notice, therefore, had not been given to the respondents, who were the overseers of *West Derby*. [*Tindal* C. J. There is no occasion for the appellant to prove the service of his notice, under the sixty-fourth section, unless the respondents do not appear (a). If they do not appear, the Court will deal with the case in their absence.] The heading of the notice ought to be like the heading of an affidavit, and properly intitled with the names of all the parties. [*Maule* J. Suppose it were an affidavit of service, and that a party were moving upon it to make a rule absolute; could the other side appear and dispute its suf-

(a) See *Newton v. The Overseers of Mobberley*, ante, p. 335.

ficiency? It is clear that such a thing could not be done.]

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*Crompton*, for the appellant. The question is, whether service of a notice of claim upon an overseer on the 20th of *July*, when that day happens to fall on a *Sunday*, is sufficient. The stat. 6 *Vict. c. 18. s. 4.* enacts that any person, desirous of making a claim to have his name inserted in the register about to be made, shall give or send to the overseers, on or before the 20th day of *July*, a notice in writing of his claim. There is nothing, therefore, in this section which makes the service on a *Sunday* bad. In various other instances the Registration Act carefully excepts *Sunday*, and forbids particular acts to be done on that day, as in sections 5, 8, 12, 18, and 20. The act of delivering the notice of claim, therefore, was not void under the stat. 6 *Vict. c. 18.*; neither was it void at common law, which legalised all acts done on a *Sunday*, except judicial acts. Fairs and markets were commonly holden on that day in Catholic times; and in *Comyns v. Boyer (a)*, it was held that "a fair holden upon the *Sunday* is well enough, although by the statute (27 *Hen. 6. c. 5.*) there is a penalty inflicted upon the party that sells upon that day; but it makes it not to be void." Notices which are required to be seen by the parishioners are now commonly affixed to the church-doors, for the express purpose of being seen by persons on *Sundays*, when they go to church. Nor does the sending of these notices of claim fall within the provisions of the stat. 29 *Car. 2. c. 7.* The receipt of the notices by the overseers is not "a work of their ordinary calling" within

(a) *Cro. Eliz.* 485.

1846. the meaning of the first section of that statute; *Rex v. Whitnash* (a); *Begbie v. Levi* (b); *Peate v. Dicken* (c); *Drury v. Defontaine* (d). Neither does the case come within the sixth section of the statute of *Charles*, as the notices are not in the nature of process; *Doe d. Turner v. Benallack* (e); *Alanson v. Brookbank* (g); *Bedoe v. Alpe* (h); *Rex v. Grees* (i); *Walgrave v. Tailor* (k). In *Regina v. The Justices of Middlesex* (l), the question was discussed at the bar, whether a notice of appeal served on a *Sunday* was a good service; but the Court did not express any opinion upon that point.

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*Arnold* for the respondents. It may be admitted that a service on *Sunday* would have been sufficient, if the 20th of *July* had not been the last day on which the notices could have been served, because the overseers would have been enabled to examine them within the time prescribed by the act. The broad ground upon which it is submitted that such a service was invalid is, that the law will not compel a party to work on a *Sunday*. The overseer was not bound to open these notices on the *Sunday*, and, consequently, he cannot be taken to have received them on the 20th of *July*. There is no hardship to the parties in holding these notices to be invalid, because they have from the 20th of *June* to the 20th of *July* to send them in to the overseers. There is an analogy between this case and that of a notice of dishonour of a bill of exchange, which, if

(a) 7 B. & C. 596.

(b) 1 C. & J. 180.

(c) 1 C. M. & R. 422.

(d) 1 Taunt. 131.

(e) *Schw. N. P.* 723. 9th ed.

(g) *Carth.* 504.

(h) *Sir W. Jones*, 156.

(i) *Comb.* 462.

(k) 1 *Ld. Raym.* 705.

(l) 12 *Law Journ. N. S. M. C.* 59.

received on a *Sunday*, is considered not to be received till the next day; *Byles on Bills* (a). So, if the last of the three days of grace falls on a *Sunday*, the bill must be paid on the *Saturday*. Again, by *Reg. Gen. Hilary* term, 2 *W. 4. r. 8.*, it is ordered, that where any particular number of days, not expressed to be clear days, is prescribed by the rules or practice of the courts, the same shall be reckoned exclusively of the first day, and inclusively of the last, unless the last day shall happen to fall on a *Sunday* &c., in which case the time shall be reckoned exclusively of that day also. The practice which formerly obtained was bottomed upon the same principle. [*Cresswell J.* It has been held that a rule nisi for an attachment for non-payment of money cannot be served on a *Sunday*; *M'Heham v. Smith* (b); and also that service on a *Sunday* of notice of plea filed, is void; *Roberts v. Monkhouse* (c); but the ground upon which those decisions proceeded was, that such notices were in the nature of process.] With regard to those cases in the act where *Sunday* is expressly excepted, the exceptions seem to have been introduced *ex abundanti cautela*, lest at any time a question might arise whether the overseers or tax-collectors were compelled to produce their lists or books for the perusal of parties upon the *Sunday*.

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*Crompton* was not called upon to reply.

TINDAL C. J. It appears to me, that in this case there was a due delivery of the notices of claim, as required by the fourth section of the stat. 6 *Vict. c. 18.*

(a) P. 162. 2nd ed.

(b) 8 T. R. 86.

(c) 8 East, 547.

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That section, in plain terms, authorizes "all persons who are desirous to have their names inserted in the register about to be made, to give or send to the overseers, *on or before* the 20th day of *July* then next ensuing, a notice in writing, by them signed, of their claim to vote." Now, the argument on behalf of the respondents is, that when the 20th of *July* falls on a *Sunday*, the notice should be served, at the latest, on the *Saturday* preceding. There is, however, no such exception in the statute, and we must take the act as we find it, especially when it is clear that where the legislature intended to except *Sunday*, they have expressed that intention, and that in several instances. The only other act of parliament which could bear upon this question is the stat. 29 *Car. 2. c. 7.*; but it is clear, that the sending of a notice of claim to the overseer is not an act which falls within any of the provisions of that statute; it is not a work done in the way of a man's ordinary calling, nor is it the service of any "writ, process, warrant, order, judgment, or decree." At common law many things might be legally done on a *Sunday*. Thus, an entry for a condition broken, or a demand of possession, may be made on a *Sunday*; and I see no reason why the same rule should not apply to the service of a notice of claim under the Registration Act. An argument has been drawn from the law with respect to notices of dishonour of bills of exchange, but the analogy will not assist the respondents, unless it could be shewn that the service of a notice of dishonour on a *Sunday* is altogether void, which is not the case. I think, therefore, that the decision of the revising barrister was wrong.

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MAULE J. I am of the same opinion. The act requires that the notices of claim shall be delivered on or before the 20th of *July*, in order that the overseers may have all the time which intervenes between that day and the last day of *July* to make out their list of claimants. In this case they have had all the time which the act intended they should have for that purpose. The words of the statute are quite clear, and we ought not to travel beyond those words, unless it could be shewn that, by following them strictly, we should allow parties to do that which is *contrà bonos mores*, or against the law of the land. There is no law, however, which requires that acts of this description shall not be done on a *Sunday*. In the case of a notice of dishonour of a bill of exchange, the service is not *void* if made on a *Sunday*, but, according to the rule which the custom of merchants has introduced, in order to enable them to shut up their places of business on that day, *Sunday* is not reckoned in the computation of time. The statute 29 *Car. 2. c. 7.* has no application to the present case. That act was passed with a view to conciliate a great number of persons in this country, who at that time held very strict notions on the subject of the observance of the *Sunday*, which they wished to assimilate to the *Jewish Sabbath*. With respect to the acts expressly prohibited by that statute, its provisions, of course, still apply, but all other acts that are not either judicial, or *mala in se*, may be lawfully done on a *Sunday*. It may be even *compulsory* upon a party to deliver a notice of claim on a *Sunday*, as in the case of a notice sent by post, which must be delivered, in the country, though not in *London*, on a *Sunday*. (a)

(a) See *Colville v. The Town Clerk of Rochester*, *infra*, note (a).

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CRESSWELL J. I am entirely of the same opinion. The statute requires the notices of claim to be sent to the overseers "on or before the 20th day of *July*." Upon these words we are invited to engraft an exception, but how is it to be done? Are we to shorten or lengthen the time, when the 20th of *July* happens to fall on a *Sunday*? It is much more reasonable to adhere to the plain words of the act, when a strict adherence to them will not lead to the infringement either of the common law or of any other statute.

ERLE J. I also think that the service of the notices of claim was good. It may be observed, that the overseers will not be subjected to any hardship by the decision of the Court; all they will have to do is to *receive* the notices, which they need not *read* till the following day.

Decision reversed. (a)

[*Hilary*]  
Vacation,  
February 23.

(a) COLVILLE, Appellant, and The Town Clerk of ROCHESTER,  
Respondent.

A notice of objection sent by post, is not void because delivered, in the ordinary course of post, on a *Sunday*.

Where the respondent does not appear, the Court will not give judgment for the appellant, without the production of an affidavit, stating that ten days' notice has been given to the respondent of the appellant's intention to prosecute the appeal.

THIS was a consolidated appeal from the decision of *John David Chambers, Esq.*, the revising barrister for the city of *Rochester*.

A notice of objection was posted on *Saturday*, the 23d of *August*, 1845, and in the ordinary course of post, would have been delivered on *Sunday*, the 24th of *August*. Upon an objection being made to the validity of such notice, as delivered and served on *Sunday*, the barrister decided that the notice was invalid by reason of the service being effected on *Sunday*, and was therefore void as being within the 6th section of the stat. 29 *Car. 2. c. 7*.

The case was argued (*January 15.*) by *C. Jones Serjt.* for the appellant. No counsel appeared for the respondent.

The case stood over for the production of an affidavit of notice to prosecute the appeal, pursuant to 6 *Vict. c. 18. s. 64. (a)*; and *C. Jones* having subsequently produced such an affidavit,

*Per Curiam,*

Decision reversed.

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(a) See *Newton v. The Overseers of Moberley*, *antè*, p. 335.

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HOYLAND, Appellant, and BREMNER, Respondent. *January 19.*

**T**HIS was an appeal from the decision of *Thomas Horncastle Marshall, Esq.*, one of the revising barristers for *South Lancashire*.

*Frazer William Hoyland* and seventeen other persons (whose cases were consolidated with that of *Hoyland*) were objected to as not being entitled to have their names retained in the list of claimants for the township of *Newton*, in the southern division of the county of *Lancaster*, in respect of the several qualifications mentioned in such list. The revising barrister struck out the names of all the claimants from the list, subject to the opinion of the Court on the following case: —

It appeared in evidence, that some time during the latter part of the year 1844, *Mr. Charles Duffield*, house agent, in *Manchester*, was employed by the claimants, who were all members or supporters of a certain political association, called the *Anti-Monopoly Association*, to procure for them qualifications to vote for members of parliament for *South Lancashire*. Accordingly, *Duffield*, in the month of *January* 1845, applied to *Mr. Worthington*, a solicitor in *Manchester*, who was known by *Duffield* to have property on sale, which would confer qualifications to vote for the said division of *South Lancashire*, to purchase such qualifications for *Hoyland* and the other claimants. He agreed with *Duffield* to sell certain freehold land and houses in the township of *Newton*, the property of a *Mr. Whittaker*, who had employed *Worthington* to dispose of this and

*A bond fide purchase of land for a valuable consideration is not rendered void by the stat. 7 & 8 Will. 3. c. 27. s. 5., although the vendees buy the land with the object of splitting and dividing the interest therein among themselves, and such object is known and acquiesced in by the agent of the vendor; the vendor himself not knowing that the object of the vendees is to multiply voices.*



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other real estates. No contract in writing as to the purchase was entered into between any of the purchasers, or *Duffield*, as their agent, and *Whittaker*. *Worthington* was employed by *Duffield* as agent for the purchasers, to draw the conveyances on their behalf, and they did not personally consult him (*Worthington*) relative to the purchase. Different portions of the above freehold premises were conveyed to the claimants in fee, by several separate deeds, in all, nine; such claimants, where more than one purchaser was included in the same conveyance, taking their respective shares as tenants in common. All the conveyances were duly executed before the 31st day of *January* 1845, and the purchase-money for each was handed over to *Worthington* at the time of execution by *Duffield*, who had previously received it from the purchasers. The price given for each purchase appeared to be the fair marketable value for the property bought. The claimants have each received the rents of their respective portions or shares, which are of sufficient value to confer a vote. It did not appear that *Whittaker* knew of the object the claimants had in view in making these purchases. The revising barrister was of opinion, that such object was to acquire for themselves votes for the purpose of multiplying voices for the election of members of parliament for the southern division of *Lancashire*, and for that purpose to split and divide their interest in the houses and land so purchased by them; and he was further of opinion, that such object was known and acquiesced in by the vendor's solicitor before the execution of the several conveyances above referred to. He therefore thought all such conveyances void for the purpose of

conferring such votes as aforesaid, under the 7 & 8 *W. 3.*  
*c. 25.*

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*Cockburn* (with whom was *Kinglake* Serjt.) for the appellant. Without discussing the general question arising where both the vendor and vendee are cognizant of the object intended by the conveyance, it is submitted that as the grantor here was ignorant of the object of the vendees, the stat. 7 & 8 *W. 3. c. 25. s. 7.* does not apply. The knowledge of that object which *Worthington* had, is not sufficient to affect the grantor, and the case, therefore, clearly comes within the principle of the decision in *Marshall v. Bown (a)*.

*Arnold* for the respondent. *Worthington* had all the requisite authority to sell for *Whittaker*, and any representation made by the agent in the course of the transaction would bind his principal. The knowledge of the agent must also be taken to be the knowledge of the principal, otherwise it would be impossible, in many cases, to affect the employer with notice.

TINDAL C. J. The revising barrister does not find that the vendor had any intention to multiply voices; and even supposing that he knew such to be the intention of the vendees, that would not be enough unless he entertained the same intention himself. The case of *Marshall v. Bown (a)* must be considered as governing the present, and therefore the decision of the revising barrister must be reversed.

Decision reversed.

(a) *Antè*, p. 278.

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January 26.

BISHOP, Appellant, and SMEDLEY, Respondent.

The appellant, not being rated to the poor for the house which he occupied, delivered to the overseer a notice of claim to be rated, at the same time asking him whether any rates were due. The overseer replied, he did not know, and the appellant, who had more money in his pocket than was sufficient to pay the rates, said "If there are, I am prepared to pay them." The overseer said "I will see to it," upon which the appellant went away. Held, that this was not a tender of the amount due, within the meaning of stat. 2 Will. 4. c. 45. s. 30.

THIS case came before the Court upon an appeal from the decision of *Denis Creagh Moylan, Esq.*, the revising barrister for the city of *Westminster*.

*James Bishop* claimed to be registered as occupier of a house, No. 213, *Piccadilly*, in the parish of *St. James, Westminster*.

The revising barrister decided that the said *James Bishop* was not entitled to have his name inserted in the list of voters, in consequence of his not having been rated in respect of the premises which he occupied as aforesaid, during the twelve months ending on the 31st of *July* 1845, and of his not having paid on or before the 20th day of *July* all the rates which were due in respect of such premises previously to the 6th day of *April* preceding; subject, however, to the opinion of the Court of Common Pleas upon the following case:—

*Bishop* had never been rated to the poor's rate for the house which he occupies. The only name that appears upon the rate book is that of *Edmund John Scott*, the landlord. On the 20th of *July* there remained a sum of 3*l.* 2*s.* 6*d.* unpaid of rates due on the 6th day of *April* last.

*Bishop's* evidence in support of his claim was to the following effect:— "On the 19th of *June* last I called on Mr. *James Catchpool*, one of the overseers, at his shop in *Regent Street*. I there delivered to him a notice of claim to be rated for the house I occupy. I asked *Catchpool* whether there were any rates due. He said

he did not know. I then said, 'If there are I am prepared to pay them.' *Catchpool* replied, 'I'll see to it.' I never made any further inquiry, and I never heard again upon the subject. I am sure that when I called upon Mr. *Catchpool* I had money in my pocket, because I remember having first gone home for a 10*l.* note. Nothing more than what I have stated passed between me and the overseer."

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The revising barrister held that the effect of the indulgence given by the thirtieth section of the Reform Act to persons claiming to be rated could not be to put them in a better position than those persons were in who were actually rated, and that *Bishop* was bound to see that the rates due on the 6th of *April* in respect of his premises were paid on or before the 20th of *July*. The revising barrister also decided that there was not, according to *Bishop's* own evidence, sufficient proof in this case of such a tender of rates on the 19th of *June* as is required by the statute.

If the Court of Common Pleas should be of opinion that the said decision was wrong, the name of the said appellant is to be inserted on the register of voters as follows : —

James Bishop.	213, Piccadilly.	House.	213, Piccadilly.
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*Arnold* for the appellant. The revising barrister was wrong in deciding that the tender of rates was insufficient. The stat. 2 *W.* 4. c. 45. s. 30., after enacting that occupiers may claim to be rated to the relief of the poor, proceeds thus: "And upon such occupier so claiming and actually paying or tendering the full amount of the rate or rates, if any, then due in respect

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of such premises, the overseers of the parish or township in which such premises are situate are hereby required to put the name of such occupier upon the rate for the time being; and in case such overseer shall neglect or refuse so to do, such occupier shall nevertheless, for the purposes of this act, be deemed to have been rated for the relief of the poor in respect of such premises from the period at which the rate shall have been made in respect of which he shall have so claimed to be rated as aforesaid." It is clear that in this case the party did all that lay in his power to comply with the requisitions of the statute, and he ought not to suffer from the neglect of the overseer. [*Maule J.* How can the overseer tell, the moment he is asked, what is the amount of rates due in respect of any house in his parish? The claimant might have ascertained the amount of the rate himself, before he went to the house of the overseer.] Not being on the rate, he had no right to inspect the rate books; but he did all he could; he went with money in his pocket, and he told the overseer that if any rates were due he was prepared to pay them. In *Bevans v. Rees (a)* a tender made under similar circumstances was held valid. There the defendant, in consequence of an application from the plaintiff's attorney for about 108/., principal and interest on two promissory notes, sent a person to the attorney, who told him that "he came to settle for the two notes, principal and interest, and he wished to know what was due;" and also laid down 150 sovereigns, out of which he desired the attorney to take the principal and interest.

(a) 5 M. & W. 306.

*Merewether, contra*, was not called upon by the Court.

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TINDAL C. J. I think the revising barrister came to a right decision in this case. The thirtieth section of the Reform Act requires the occupier claiming either actually to pay the rate, or to tender the full amount due. It is clear that there was no actual payment; and it appears to me that there was not a sufficient tender of the amount; for the understanding between the parties seems to have been, that if the claimant would call again upon the overseer, he would inform him whether any, and what amount of rates, were due. It appears that he did not call again, and having therefore left the overseer's house, *re infectâ*, he has not complied with the requirements of the act of parliament.

MAULE J. I am of the same opinion. The question is, whether there was a tender within the meaning of the thirtieth section of the statute. Without meaning to say that the tender required by this section must be made with the same nicety and precision which is necessary to support a plea of tender, a party ought to do what is fair and reasonable. The overseer, it is plain, acted *bonâ fide*; but the appellant conducted himself very much like a person who did not wish to *pay* the rate; for when the overseer said, "I will see to it," he left, and never went near the house again, relying on what he had already done as being a sufficient *tender*, which it certainly was not.

CRESSWELL and ERLE JJ. concurred.

Decision affirmed, with costs.

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January 26.

CROUCHER, Appellant, and BROWNE, Respondent.

Freemen and liverymen of the city of *London* admitted to their freedom by purchase since the 1st of *March*, 1831, are entitled to be registered and to vote, notwithstanding the proviso in the 32d section of the Reform Act, which applies only to burgesses or freemen in other cities or boroughs.

The Court refused costs, though one side only had been heard, where the question was entirely a matter of law.

AT a court held before *Thomas James Arnold*, Esq., the revising barrister for the city of *London*, *J. H. Croucher* duly objected to the name of *E. Browne* being retained in the list of such of the freemen of *London* as are liverymen of the Company of Bakers, entitled to vote in the election of members for the city of *London*. The revising barrister retained the name in the list, subject to the opinion of the Court upon the following case : —

The respondent was admitted to the freedom of the company of bakers, and to the freedom of the city of *London*, by redemption or purchase in the month of *January* 1834, and to the livery of the said company in the month of *March* following. His qualification was in other respects perfect. On behalf of the appellant it was contended that by the 2 *W. 4. c. 45. s. 32.* the respondent was disqualified, inasmuch as having been admitted a freeman since the 1st of *March* 1831, “otherwise than in respect of birth or servitude,” he was not entitled to vote “as such.” The revising barrister decided, that the words “as such” in the said section were limited to persons who voted as burgesses or freemen; that the freemen and liverymen of *London* did not vote as freemen, but as freemen and liverymen; and therefore that a freeman and liveryman who had been admitted a freeman by purchase after the said 1st of *March* 1831, was not disqualified by the disfranchising proviso of the said section. If the Court should be of

opinion that the said decision was wrong, the name of the said respondent was to be expunged from the list of voters for the said company.

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*Kinglake* Serjt. (*Welsby* with him) for the appellant. On the true construction of the thirty-second section of the Reform Act, the revising barrister was clearly wrong. That section entitles every person to vote "either as a burgess or freeman, or, in the city of *London*, as a freeman and liveryman," provided such person shall be duly registered; and then the proviso declares "that no person who shall have been elected, made, or admitted a burgess or freeman since the 1st day of *March* 1831, otherwise than in respect of birth or servitude, or who shall hereafter be elected, made, or admitted a burgess or freeman, otherwise than in respect of birth or servitude, shall be entitled to vote as such, in any such election for any city or borough as aforesaid, or to be so registered as aforesaid." The argument on the other side will no doubt be, that this restriction applies to one class only of the persons mentioned in the proviso; and that the words "as such" refer only to burgesses or freemen, and not to liverymen. It is submitted, however, that no liveryman can vote for the city of *London* who has been admitted to his freedom by purchase, since the 1st of *March* 1831. The object of the legislature was to exclude honorary freemen, and thus preserve the purity of the franchise, and there is no reason why the city of *London* should be deprived of the protection which the statute affords to other corporations. The words "as such" in the proviso refer to freemen, as contradistinguished from those entitled to vote in respect of



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any other right. A liveryman of the city of *London* is one who occupies a certain position with respect to some particular company, which is not necessarily connected with the freedom of the city. It is true that before a person can be admitted to the freedom of the city he must, in general, be a freeman of some company, but it is submitted that the right to vote springs from the party's being a freeman of the city of *London*. In the same way, in some boroughs, freemen are not entitled to vote unless they also pay scot and bear lot; *Shepherd on Elections* (a). They vote, however, as freemen. The stat. 11 G. 1. c. 18. regulates the exercise, in *London*, both of the municipal and the parliamentary franchise, and the form of the oath thereby required to be taken upon the election of members of parliament, shews that the voter must be a freeman of *London* and a liveryman of some company. So, in the election of aldermen and common-councilmen the party who tenders his vote at the poll is required, by the same statute, to make oath that he is a freeman of *London*, and a householder in a ward, but in both cases the party votes in his capacity of freeman, and not as a liveryman, or as a householder. [*Tindal C. J.* The fourteenth section of the act enacts "that no person shall have *any right to vote* who has not been upon the livery by the space of twelve calendar months before such election."] That section does not confer the franchise; it merely requires that the freeman shall have been twelve months a liveryman before voting. The object of the legislature was to prevent the sudden creation of freemen upon the approach of an election. The stat. 3 G. 3. c. 15., commonly called the *Durham*

(a) 2d ed. p. 38.

Act (a), enacts that “no person whatsoever claiming as a freeman to vote at any election of members to serve in parliament for any city, town, port, or borough in *England, Wales, and the town of Berwick-upon-Tweed, where such voter's right of voting is as a freeman only*, shall be admitted to give his vote at such election, unless such person shall have been admitted to the freedom of such city, town, port, or borough, twelve calendar months before the first day of such election,” under a penalty of 100*l*. It is clear that the legislature thought at that time that this enactment would apply to the city of *London*, and therefore by the eighth section *London* is specially exempted from the operation of the act. It seems, therefore, that they recognised the right of voting in *London* to be in “freemen only.” The cases of *Daman v. Marrett* (b) and *Williams v. Evans* (c) are authorities upon the construction of that act, and show that, although other qualifications might have been required, yet that the parties voted in the character of freemen. [Cresswell J. In *Williams v. Evans* (c), it was necessary that a party should be an inhabitant, paying scot and lot at the time of his admission to the freedom of the borough, but not that he should continue to pay scot and lot afterwards. In *London*, however, the voter must be a liveryman as well as a freeman. The case, therefore, has no application.] The words “freeman and liveryman” in the act mean “freemen being liverymen.” The forty-eighth section of the Reform Act enacts, “That for providing a list of such of the freemen of the city of *London as are liverymen* of the several companies entitled to vote in the election of a member

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(a) 2 *Peck*. 177.(b) 1 *Taunt*. 128.(c) 8 *T. R.* 246.

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or members to serve in any future parliament for the city of *London*, the returning officer or officers of the said city shall, on &c., issue precepts to the clerks of the said livery companies, requiring them forthwith to make out or cause to be made out, at the expense of the respective companies, an alphabetical list, according to the form in the schedule (K) to this act annexed, of the *freemen of London being liverymen* of the said respective companies, and entitled to vote in such election,” and the corresponding section (a) of the stat. 6 *Vict.* c. 18. follows the words used in the Reform Act. And in schedule (K) of the Reform Act, there is a form of “*A list of such of the freemen of London as are liverymen of the company of ————* entitled to vote &c.” [Maule J. The form No. 2, in that schedule, speaks of “the list of persons entitled to vote as freemen of the city of *London and liverymen* ;” and the form No. 3 uses the same language.] The words “such of the freemen being liverymen” are also used in another statute, the act for limiting the duration of the poll in cities and boroughs to one day, stat. 5 & 6 *Will.* 4. c. 36.

Further, assuming that the words “as such” are not to be construed in the manner contended for, the name of the respondent ought not to have been retained on the list, inasmuch as the proviso already referred to in the thirty-second section of the Reform Act is, that no person admitted to his freedom since the 1st of *March*, 1841, otherwise than in respect of birth or servitude, shall be entitled “to be so registered as aforesaid.” [Cresswell J. You must contend, then, that all persons, though entitled to vote as 10*l.* householders, who have been admitted to the freedom of the city of *London* since

(a) Sect. 20.

that time, are not entitled to be registered.] It is not necessary to push the argument to that length, as the words "so registered as aforesaid" apply only to the registration of freemen.

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*Gurney* (with whom was *Grove*) appeared for the respondent, but was not called upon by the Court.

TINDAL C. J. The question in this case turns upon the proper construction to be given to the thirty-second section of the Reform Act, and I am unable to read that section in any other way than as making a clear distinction between a burgess or freeman of an ordinary city or borough, and a freeman and liveryman of the city of *London*. In the first place, when the act speaks of other cities and boroughs, the words burgess or freeman are used, but when it comes to speak of *London*, the words used are "freeman and liveryman." At first sight, therefore, it would appear that, as these two words are coupled together, the section connects the character of freeman with that of liveryman, and makes the right to vote depend upon the combination of both these qualifications; and this distinction is kept up throughout the section. The section first enacts, that every person who would have been entitled to vote in the election of a member &c., either as a burgess or freeman, or in the city of *London* as a freeman and liveryman, shall be entitled to vote, provided such person shall be duly registered. It then goes on to say that no such person shall be so registered in any year, "unless, where he shall be a burgess or freeman, or freeman and liveryman, of any city or borough," he shall have resided for six calendar months &c. within such

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city or borough; still making a marked distinction between the burgess or freeman of any city but *London*, and the freeman and liveryman of *London*. Then comes a clause which clearly cannot apply to *London*, because it refers to "a burgess or freeman of any place sharing in the election for any city or borough;" and in which we find, therefore, that the words "freeman and liveryman" are dropped. We then arrive at the proviso in question, which runs thus: "Provided always, that no person who shall have been elected, made, or admitted a *burgess or freeman* since the 1st day of *March* 1831, otherwise than in respect of birth or servitude, or who shall hereafter be elected, made, or admitted a burgess or freeman, otherwise than in respect of birth or servitude, shall be entitled to vote as *such* in any such election for any city or borough as aforesaid, or to be so registered as aforesaid." This being a disfranchising exception, I cannot perceive how it is to be extended to the city of *London*, when we see that the words "freeman and liveryman," which have been used in the former part of the section, are omitted in the proviso. Again, if we look at schedule (K), we find the same distinction preserved, the words "freeman" and "liveryman" being joined together, both in the form of the list of claimants, and in the form of a notice of objection; thus shewing that the double character of a freeman and liveryman is necessary to entitle a party to vote. When, therefore, we come to the words "entitled to vote as *such*" at the end of the proviso, and connect them with the words immediately preceding them, "burgess or freeman," it appears to me that the revising barrister exercised a sound judgment when he held that the disfranchising words of the proviso

applied only to a burgess or freeman of an ordinary city or borough, and not to the freemen and liverymen of the city of *London*. It may be asked, why should there be this distinction between *London* and other places? I cannot say what reasons may have influenced the legislature in making this distinction, but possibly it may have been thought that the existence of companies so numerous as those in the city of *London* was a sufficient check upon those malpractices which might take place in other cities and boroughs.

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MAULE J. I am also of opinion that the revising barrister was right, and I cannot say that any doubt has been raised in my mind by the argument of my brother *Kinglake*, able and ingenious as it was. It is impossible to handle the act without turning up something to shew that the construction contended for by the appellant is not correct. The intention of the thirty-second section of the Reform Act was to preserve certain vested rights, but at the same time to prevent corporations making a number of voters who might swamp the whole constituency. The proviso, therefore, applies to cases where corporations had the power of making voters, as well as of returning members to parliament. But in the city of *London* the corporation alone has not the power of making voters, which can only be effected by the companies also making liverymen; and with *London*, therefore, the act did not intend to interfere. The language in which that intention is expressed is, if read in its ordinary sense, quite plain and unequivocal. In order to avoid its effect, all that can be said is, that the legislature has made an unintentional mistake; but the whole scope of the sec-

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tion accounts for the omission of *London* in the disfranchising portion of it, namely, the proviso. The language used in the proviso is, that no person "who shall hereafter be elected, made, or admitted a burgess or freeman, otherwise than in respect of birth or servitude, shall be entitled to vote as such," that is, as such burgess or freeman. If, indeed, it had been made out that in *London* parties voted as freemen only, there might have been some ground for the argument, but it is quite clear that they vote as "freemen *and* liverymen,"—words which occur several times both in the Reform and the Registration Acts. This being the case, we could not, without doing the greatest violence to the language of the proviso, hold that it applied to liverymen and freemen, and not merely to burgesses or freemen. Then, the last argument was, that, assuming the proviso not to take away the right of voting, it took away the right to be registered. But the words are perfectly plain. The proviso says that the burgess or freeman, under certain circumstances, shall not vote, and shall not be registered. Whatever obscurity there may be in other parts of the act, there is really no doubt here, and I think, therefore, that the decision of the revising barrister ought to be affirmed.

CRESSWELL J. I am quite of the same opinion. The section in question provides that a burgess or freeman, or, in the city of *London*, a freeman and liveryman, shall be entitled to vote if duly registered. Now, in order to be duly registered, the party must, in *London*, be registered as a freeman and liveryman. The schedule which has been referred to clearly shews this to be the case. The section then goes on to say that "no person

shall be so registered, unless, where he shall be a burgess or freeman, or freeman and liveryman of any city or borough, he shall have resided for six calendar months" &c. That provision does not touch the manner in which the party may become entitled to be a burgess or freeman, or a freeman and liveryman. Then comes the proviso, enacting that no burgess or freeman thereafter admitted, otherwise than in respect of servitude or birth, shall be entitled to vote *as such*, or to be registered. The words "as such" apply only to a burgess or freeman, and not to a freeman and liveryman, and consequently do not touch persons who have been made freemen and liverymen since the 1st of *March*, 1831. With regard to the words "or to be so registered as aforesaid," they clearly mean that a party becoming a burgess or freeman, subsequently to that date, is not to be registered as a burgess or freeman, unless admitted in respect of birth or servitude.

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ERLE J. It appears to me that throughout the Reform and Registration Acts, there are two kinds of qualification recognised as arising out of the corporate right of voting, one of which consists in being a freeman and liveryman of *London*, the other in having a right to vote as a burgess or freeman in any other city or borough. The legislature has imposed a certain restriction by the proviso in the thirty-second section on the latter class of persons; but though the terms "burgess or freeman" and "freeman and liveryman" are as distinct as the letters *A* and *B*, the argument of counsel is, that where *A* only is used, it includes *B*.



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*Gurney* applied for costs, one side only having been heard (a).

MAULE J. (b) No; I think that this is not a case for costs, the question here turning upon a matter of law, and not, as in the last case (c), upon a matter of fact, which the appellant had raised for himself.

Decision affirmed, without costs.

January 26.

BUSHELL, Appellant, and LUCKETT, Respondent.

Until a rate be perfected by publication and allowance, the last valid rate made in the parish continues in force.

Therefore, where a rate was made under a local act for thirteen weeks, from the 16th of September till the 16th of December, and another rate was made on the 23d of December, which was not published till the 5th of January following;

Held, that an occupier claim-

ing on the 27th of December to be put upon the rate for the time being, pursuant to stat. 2 Will. 4. c. 45. s. 30., must be deemed to have been rated to the September rate, as the rate for the time being.

AT a court held before *Thomas James Arnold*, Esq., the revising barrister for the city of *London*, *W. E. Lockett* duly objected to the name of *William Bushell* being retained on the list of persons entitled to vote in the election of members for the city of *London*, in respect of the occupation of a house, No. 1, *Still Alley*, in the parish of *St. Botolph, Bishopsgate*. The revising barrister expunged the name of *Bushell* from the list, subject to an appeal to the Court of Common Pleas upon the following case:—

The qualification of the appellant was duly proved in all respects, except as to the sufficiency of the rating. The poor-rates in this parish are made under a local act, 35 G. 3. c. lxi., by sect. 16 of which the rector, churchwardens, overseers of the poor, and inhabitants

(a) See *Allen v. House*, antè, p. 255.; *Walker v. Payne*, antè, p. 324.

(b) *Tindal* C. J. had just left the Court.

(c) *Bishop v. Smedley*, antè, p. 384.

of the said parish are authorized and required to assemble and meet together, in the vestry-room of the said parish, on the 25th of *June* 1795, and from time to time for ever thereafter, quarterly, or oftener, in every year, as occasion shall require, due notice having been given &c., and they or the major part of them so assembled, shall, from time to time, make such rate or rates, assessment or assessments, for paying the interest due on certain annuities, and for and towards the relief of the poor of the said parish, and for other the purposes of this act, upon all and every person or persons who do or shall inhabit &c., as they the said rector &c., at such meeting, shall think necessary and proper to be rated and assessed &c. There were four rates made in the said parish between the 31st of *July* 1844, and the 31st of *July* 1845. The first rate was made on the 28th of *September* 1844, was allowed on the 4th of *October* following, and published on the 6th of *October*. That rate was headed as follows:—"We, the rector &c. being assembled and met together this 28th day of *September* A.D. 1844, in the church of the said parish, due notice having been given of such meeting, do hereby make the following rate or assessment, being 10½*d.* in the pound upon all and every person or persons who do or shall inhabit," &c. (following the words of the act) *for thirteen weeks from the 16th day of September to the 16th day of December, 1844.*" The second rate was made on the 23d of *December* 1844, was allowed on the 3d of *January* 1845, and published on the 5th. This last-mentioned rate had a similar heading to the rate first mentioned, being made "for thirteen weeks," from the 16th day of *December* 1844, to the 17th of *March* 1845. The dates of the other two rates are not

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material; they were each headed in a similar manner, and purported to be made "for thirteen weeks respectively." Each rate, though it purported to be made on a particular day, was not in fact made out as to the assessment of the different parties included therein till some days afterwards. The appellant was not rated to the first-mentioned rate, nor did his name appear thereon; but at the end of the rate after the allowance thereof there was a long list of names, including that of the appellant, which list was headed thus: "The following are the names of persons who have made claim to be rated since the completion of the foregoing rate." It was not proved that any claim to be rated was made by the appellant before the 27th of *December* 1844; but on that day a notice of claim was served, on his behalf, on one of the overseers. The claim was in this form: "To the overseers of the parish of *St. Botolph, Bishopsgate*. I hereby give you notice that I occupy a house at No. 1, *Still Alley, Bishopgate Street*, in your parish, and I claim to have my name inserted as occupier thereof in the rates made to the relief of the poor in your parish, pursuant to the 6 & 7 *W. 4. c. 96.*, and to the *English Reform and Parliamentary Registration Acts*. Dated, &c. (Signed) *William Bushell*, residing at No. 1, *Still Alley*." At the time the said claim was served, no rate was due in respect of the house in question, the rate having been paid by the landlord. The said claim was served at the same time with several others, and at the time of such service the overseers were told that the names of the parties so claiming ought to be put upon the *September* rate, in consequence whereof the names were so inserted in the before-mentioned list at the end of the *September* rate-

book. The appellant was duly rated to the rate made on the 23d of *December* 1844, and other subsequent rates. On behalf of the appellant it was contended, that at the time the said claim to be rated was so made as aforesaid, the *September* rate was the rate for the time being, within the meaning of the thirtieth section of the statute 2 *W. 4. c. 45.*; and, therefore, that the appellant was to be deemed to have been rated to that rate. The revising barrister decided that the *September* rate was not the rate for the time being at the time when the said claim to be rated was so made as aforesaid. If the Court should be of opinion that the said decision was wrong, the name of the said appellant was to be re-inserted in the said list of voters.

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*Welsby* for the appellant. The question is, which was the rate in force "for the time being," when the claim to be rated was made, within the meaning of the thirtieth section of the stat. 2 *W. 4. c. 45.* The claim was made on the 27th of *December*, and it is submitted, that the *September* rate was then "the rate for the time being," although another rate had been made on the 23d of *December*, for thirteen weeks, from the 16th of *December* to the 17th of *March* in the following year. The *December* rate was not made perfect by allowance and publication, till the 5th of *January* 1845, and consequently, on the 27th of *December*, the *September* rate was the rate for the time being. The rate, when made, cannot be limited to any particular period. It is in force for the whole time during which the funds collected under it are sufficient for parochial purposes. At all events, for the purpose of collecting arrears due, the *September* rate was, at the time the claim to be rated

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parochial officers need not have made a new rate till it was expended. Then, as publication is requisite to the validity of a rate, the *September* rate was on the 27th of *December*, when the claim was made, the rate for the time being.

Decision reversed.

January 29.

ALEXANDER, Appellant, and NEWMAN,  
Respondent.

A conveyance made in completion of a *bond fide* contract of sale, where the money is paid on the one hand, and possession of the land taken on the other, and where there is no secret reservation or trust for the benefit of the vendor, is not within the meaning of the stat. 7 & 8 Will. 3. c. 25. s. 7., though the avowed object of both the vendors and vendees in becoming parties to the conveyance is the multiplying of voices in the election of members of parliament.

THIS was a consolidated appeal from the decision of *John William Harden, Esq.*, the revising barrister for the West Riding of the county of *York*, by whom the following case was stated for the opinion of the Court.

At the Court held for the revision of the list of voters of the township of *Lockwood* in the polling district of *Huddersfield* in the said riding, *Joseph Bottomly* and thirty-four other persons claimed to have their names inserted in the register of voters for the said township of *Lockwood* as the several owners each respectively of an undivided thirty-fifth part of freehold land and buildings at *Lockwood*, in the said riding. The facts of the case are as follows, and will, for convenience, be stated as if applying to one only, though equally applicable to each of the thirty-five claimants:—*Joseph Bottomly* being desirous of obtaining a qualification to vote in the election of members to serve in parliament for the said riding, some time in the month of *January* 1845, called upon one *T. R.*, the agent of a political association in the town of *Huddersfield*, and requested the said *T. R.*

to obtain a vote for him, the said *Joseph Bottomly*. *J. Bottomly* wished to obtain the qualification as cheaply as he could, but did not care about the nature or situation of the property, provided it would confer the right of voting, and did not involve an outlay of money beyond what would give the qualification, and, at the same time, secure the ordinary rate of interest. *Joseph Bottomly's* motive in applying to *T. R.* was not, however, the investment of money in land or buildings, but only to acquire the right of voting. Some time in the same month of *January*, Messrs. *C.* being wealthy manufacturers in the neighbourhood of *Huddersfield*, authorized the said *T. R.* to sell for them certain lands and cottages, their property, for the sum of 1,400*l.*; the only object of Messrs. *C.* in so authorizing the said *T. R.* to act for them, was to increase the number of voters for members to serve in parliament for the said riding; they were not in want of money, and would not sell any portion of their estate below its fair and reasonable value. *T. R.* was not the attorney generally employed either by Messrs. *C.* or *J. Bottomly*, but as agent to the before-mentioned association he had previously caused advertisements to be inserted in the public papers, inviting parties either to sell or to purchase small freeholds, for the purpose of qualifying voters for the said riding, and referring to himself as such agent. In consequence of such authority from the said Messrs. *C.*, and of such instructions from *J. Bottomly*, and many other parties similarly disposed, the said *T. R.* arranged the purchase and sale of the said lands and cottages by the said Messrs. *C.* to the said *J. Bottomly* and thirty-four other persons as tenants in common for the sum of

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1,400*l.* A deed conveying the said land and cottages was accordingly prepared by the said *T. R.*, and was duly executed by the said *J. Bottomly* on the 22d day of *January* last, on which occasion, the said *J. Bottomly* paid his portion of the purchase money, viz. 40*l.* to the said *T. R.* for and on behalf of Messrs. *C.*, together with 1*l.* towards *T. R.*'s bill of costs. On the same 22d day of *January* a lease of the land and cottages in question was executed by *J. Bottomly*, and the thirty-four other tenants in common to the said vendors, Messrs. *C.*, for the period of fifteen years, at the annual rent of 70*l.*, which rent has since been duly paid. The land and cottages are within a very short distance of Messrs. *C.*'s mill, and were before, and at the time of the purchase, and still are in the occupation of persons employed by the said Messrs. *C.* in their said mill. *J. Bottomly* has never seen the property in question, and stipulated, when he applied to Mr. *R.* on the subject, that he (*J. B.*) was to have no trouble in the matter, but should receive 40*s.* per annum for his 40*l.*, and secure the right of voting. The conveyance was complete and *bonâ fide*, the purchase money really paid by the said *J. Bottomly*, and the several other purchasers, and there was no secret trust nor reservation in favour of the sellers, nor any stipulation as to the mode in which the elective franchise should be exercised by the said thirty-five purchasers or any of them, nor had any of them any communication with Messrs. *C.*, save through their common solicitor *T. R.* The said Messrs. *C.* and the said thirty-five purchasers entertain the same political opinions; and though there was no immediate concert between them, the avowed and only object of the trans-

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action, on both sides, was to multiply voices in the election of members of parliament for the said riding. Upon these facts, the claim of the said *J. Bottomly* to have his name inserted in the said list of voters was opposed, on the ground that the case came within the statute 7 & 8 *W. 3. c. 25.*, commonly called the splitting act, as being a conveyance made in order to multiply voices or to split and divide the interest in houses or land among several persons, to enable them to vote at elections of members to serve in parliament, and, therefore, void, and of none effect. The revising barrister decided, that the statute did not apply to conveyances made under the circumstances disclosed in the foregoing statement of facts; that no conveyance of an estate for an adequate consideration, made *bond fide*, without reservation, ratified according to law, and accompanied by payment of the purchase money on the one hand, and possession of the property or receipt of the rents, as in this case, on the other, can afterwards be nullified by an inquiry into the motives which may have actuated the contracting parties before, or at the time of the transaction, and that the said *J. Bottomly* and the said thirty-four other claimants were entitled to have their names retained in the list of voters for the said riding, in respect of their several and respective shares in the said freehold land and buildings.

The case was argued (in *Michaelmas* term, November 13th,) by *Kingslake* Serjt., for the appellant, and *Martin*, for the respondent.

The arguments on either side are so fully stated in the judgment of the Court, that it is deemed unnecessary to recapitulate them.

*Cur. adv. vult.*



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TINDAL C. J. now delivered the judgment of the Court.

This appeal against the decision of the revising barrister for the West Riding of the county of *York* raises the distinct question, whether a conveyance of land to a numerous body of purchasers, as tenants in common, is void under the seventh section of the stat. 7 & 8 *W. 3. c. 25.*, such conveyance being made, both on the part of the vendor and the vendees, for the avowed and only object of multiplying voices in the election of members to serve in parliament, but at the same being a *bona fide* conveyance made on a contract of sale, where the purchase money was really paid, and possession of the land really taken and kept under the conveyance, and where there was no secret trust or reservation in favor of the seller, nor any stipulation as to the mode in which the elective franchise should be exercised.

The question is undoubtedly one of considerable importance, not only as it involves a general principle of election law, but as it applies to a large number of the cases reserved for our determination. It has been argued before us both upon the present and upon other reserved cases; and we are of opinion, upon the proper construction of the statute above referred to, taking into consideration at the same time, the statutes subsequently passed and relating to the same subject-matter, that the conveyance in question was not a void conveyance, and that the several persons claiming to vote under it were entitled to have their names retained on the list of voters for the West Riding of the county of *York*. Even if the statute 7 & 8 *W. 3. c. 25.* were the only statute passed upon the subject, and that statute were to be construed strictly by its very letter, we think

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its provisions could not be held to extend to the case of any conveyance made upon a really *bonâ fide* contract for the sale and purchase of land; but that the statute was intended to apply to fictitious conveyances, to conveyances that had nothing more than the form and appearance of a conveyance; which consisted of the parchment and seal only, the parties thereto having privately agreed and intended that no interest should actually pass thereby. The first observation that arises upon the statute of *Will. 3.*, as to the provision now under discussion is, that the clause is declaratory only of the common law. The first branch of that section does, indeed, create a new law. It is thereby enacted that no person shall have a vote at elections by reason of any trust estate or mortgage, unless such trustee or mortgagee be in actual possession or receipt of the rents and profits of the same estate; but that the mortgagor or *cestui que* trust in possession shall vote for the same estate. But the second branch of the section, which is that now under discussion, is framed very differently, and by this latter branch all conveyances, in order to multiply voices, or to split and divide the interest in any houses or lands among several persons to enable them to vote at elections of members to serve in parliament, are thereby declared to be void and of none effect. This marked distinction between the two parts of the section, proves incontestably that the latter part was intended only to declare the law as it stood, giving to such law the greater weight and sanction of a legislative declaration. The first question therefore is, what conveyances, made in order to multiply voices at elections, would be void at common law? The right of voting for knights of the shire did by the common law, as regulated by the two statutes 8 &

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10 *H.* 6., belong to such people resident in each shire, whereof every one had frank tenement within the same county to the value of 40s. by the year at least, above all charges; and there was no restriction or prohibition by the common law against any man's purchasing a freehold within the county of sufficient amount to qualify him to vote, nor on the other hand, against any man selling the same to one or to any number of purchasers, although the object of the seller and purchaser might be that the purchaser might acquire a vote, and consequently that the number of voters should be thereby increased. By the common law, therefore, no conveyance really and honestly made for the purpose of carrying such contract into effect was void. But by the common law, from the earliest times, a conveyance, however perfect in point of form, being such in form only, and intended by the secret agreement or understanding between the parties never to have any legal effect as a conveyance, was always held to be void, whatever the secret object and purpose of the parties in making such conveyance might be. The old text writers lay it down as a maxim, that "the law abhors covin; and, therefore, every covinous act shall be void." And it is upon that principle unquestionable, that a conveyance made in order or for the purpose of giving a qualification to vote at an election, or any other purpose, if made with a secret intention and design, that it should appear to the world as a conveyance, but, as between the parties themselves, should pass no interest and have no effect, would be fraudulent and void at common law. Lord *Somers*, and it is impossible to name an authority of greater weight on a subject of the nature of the present, is express to this point; and in

the observations made by him on the trial of the case of *Onslow v. The Bailiff of Haslemere* (a), for misconduct as a returning officer, on which occasion it was proved that many of the voters claimed under conveyances of very minute and insignificant parts of burgage lands which had been lately made, and which were fraudulently contrived to make votes against an election, he lays it down thus: "This case should caution persons, having rights of election, against making votes by splitting burgage freeholds by the said fraudulent conveyances, all such conveyances as are not made *bonâ fide* on good consideration being in that case held to be void by the common law." He then draws a very marked distinction between conveyances made to give qualifications where they are real and honest, and where they are fraudulent and fictitious, considering the latter only void at common law; and as this trial took place only about fifteen years before the passing of the statute of *Will. 3.*, the language of Lord *Somers* affords very strong evidence how the common law stood at the time of passing the act. Again, the very language of the statute of *William* seems to point to the necessary distinction that real and *bonâ fide* conveyances were not intended to be abolished, although the motive or purpose of the parties might be that of multiplying voices at elections, but such conveyances only, made for that purpose, as were pretended and fictitious. The statute says, all conveyances in order to multiply voices are declared to be void. The statute names the conveyance only; it makes no reference whatever to any contract for sale upon which a real conveyance was grounded, nor professes to deal in any manner with the estate or

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(a) See *Lord Somers' Tracts*, vol. viii. p. 275.

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interest in the land which was affected by such contract of sale, nor provides for the revesting of the land which passed into the possession of the purchaser under the contract of sale, nor for the repayment of the purchase money to the purchaser; all which provisions might reasonably be expected, if a conveyance upon a real *bonâ fide* contract of sale, and not a fictitious conveyance only, was intended to be avoided on account of the motive upon which it was entered into. And this is the more striking, as in the very same section provision is made as to the estate of trustees and mortgagees, so that the mind of the legislature must have been awakened to the distinction between a pretended conveyance which conveyed no estate, and one which was the completion of a real contract between the seller and the purchaser. According to the distinction laid down by Lord *Thurlow* (a), “if the *jus disponendi* remains in any other person, it is in vain that the parchment conveys the right to the grantee, for the real use of the estate remains in another.” And if the words of the statute do not in their strict and necessary construction compel us to hold a conveyance made for the completion of a *bonâ fide* contract of sale to be void on the ground that the object and purpose was to multiply voices at an election, there is no general principle upon which these words ought to be extended. The object of increasing the number of freeholders at a county election, is not an object in itself against law, or morality, or sound policy. There is nothing injurious to the community in one man selling and another buying land for the direct purpose of giving or acquiring such qualification. The object to be effected is neither *malum in se* nor *ma-*

(a) 3 *Lud.* 371.

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*lum prohibitum*; on the contrary, the increasing the number of persons enjoying the elective franchise has been held by many to be beneficial to the constitution, and certainly appears to have been the leading object of the legislature in passing the late act "for amending the representation of the people of *England and Wales*."

What ground, therefore, can exist for extending to a real and honest proceeding, the words of the statute, which may be fully satisfied by giving them the force of avoiding a fictitious conveyance only? It is further to be observed, that the holding the statute of *William* to extend to a conveyance made upon a real sale, would be productive of much inconvenience and injury to all claiming under the purchaser. The supposed object and purpose which the sale intended was to effect cannot be discovered upon the face of the conveyance, but is altogether concealed in the breasts of the parties themselves; so that by the larger construction of the statute contended for on the part of the appellant, at any future time, and between other parties than those to the original conveyance, this secret motive, if brought to light by accident or otherwise, might destroy the title to the estate in whosoever hands it might be. The same rule of law must apply, whether the purchasers are many or few; perhaps even a conveyance of part of the seller's land to one single person, with the object above mentioned, must be held to be void; so that, upon such a construction of the act, a man of large landed estate could not sell any part of it *bonâ fide* for a full consideration in money to two different purchasers, or perhaps to one only, if the object of such sale was to give the purchaser a vote for the county; for the creation of two additional voters, perhaps of one only, would be equally within the principle,

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though not in an equal degree, a multiplication of voices at an election, and a splitting and dividing the interest in houses and lands amongst several persons. The holding, therefore, the literal construction of the words of the statute of *William* to make such *bonâ fide* conveyances absolutely void, would very much fetter the full and free enjoyment of landed property, and create insecurity in titles to estates. Upon these various grounds, and for these considerations, we think the sounder construction of the statute of *William*, taken by itself, is, that by the conveyances made in order to multiply voices which are thereby declared to be void, are intended such conveyances only as at the time of the passing of the act would have been held to be void by the common law, that is, conveyances meant not to transfer any real interest in the land, but made for the purpose of multiplying voices at elections, and for that purpose only. And as to the observation made in the course of the argument, that if already void by common law there was no necessity for avoiding them by the statute, it may be a sufficient answer that it was thought useful, when such baneful practices as those described by Lord *Somers*, in the passage before cited, were in daily practice, to promulgate this doctrine of the common law to sheriffs and other officers upon whom the duty of conducting an election was cast, and to give it the additional weight and solemnity of a legislative declaration.

If, however, any doubt exists on the construction of the statute of *Will. 3.*, when considered by itself, such doubt will be removed when the subsequent statutes made upon the same subject, and to effectuate more fully the same object, are taken into consideration. The next statute in order of time is that of

the 10 *Ann. c. 23.* That statute, it is to be observed, is not so wide in its operation as the statute of *William*, for whilst the earlier statute, by its general terms, extends to all elections where the right of voting depended upon the ownership of land whether in counties or boroughs, the statute of *Anne* is confined exclusively to the multiplying of votes in the elections of knights of the shire. This statute is intituled “An Act for the more effectual preventing fraudulent conveyances in order to multiply votes for electing knights of the shire to serve in parliament,” the very title of the act leading to the inference that it is directed not against all conveyances for that purpose, but against fraudulent conveyances only. The act then begins by reciting in terms the seventh section of 7 & 8 *W. 3.*, upon which this question arises, and it then further recites that many fraudulent practices have been used of late to create and multiply votes to the great injury, amongst others, of those persons who have just right to elect. The recital, therefore, as well as the title, equally points out the distinction between the creation of votes by fraudulent and fictitious means, and the making of real votes, the latter of which could never be considered to fall within the language of the recital — to be “an injury to those persons who have just right to elect.”

The first section goes on to enact, “that all estates and conveyances whatsoever made, to any person or persons, in any fraudulent or collusive manner, on purpose to qualify him or them to give his or their vote or votes at such elections of knights of the shire, (subject nevertheless to conditions or agreements to defeat or

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determine such estate, or to reconvey the same,) shall be deemed and taken against those persons who executed the same, as free and absolute, and be holden and enjoyed by all and every such person or persons, to whom such conveyance shall be made as aforesaid, freely and absolutely acquitted, exonerated, and discharged of and from all manner of trusts, conditions, clause of re-entry, &c., or other defeasances whatsoever." And the act then goes on to enact, that all securities given for the performance of such trusts shall be void, and it imposes a penalty of 40*l.* on every person executing such conveyances, or voting under them. And we consider this latter statute to be a legislative exposition of the clause of the statute of *William* therein set forth, that the avoiding of conveyances, made in order to multiply voices at elections, was meant by the original statute to be confined to such conveyances only as were fraudulent and collusive, to conveyances which are such in form only, but never intended to pass the property, or to such as were accompanied by some secret trust or reservation for the benefit of the grantors, and not to extend to a *bonâ fide* conveyance made in completion of an actual contract of sale and purchase of land. For the statute of *Anne* is expressly limited to fraudulent conveyances, and it cannot be intended that the statute of *Anne*, passed to render the former statute of *William* more efficacious, should be, as to county elections, less comprehensive in its provisions than the former statute, or that the former should comprise within it the avoidance of a *bonâ fide* conveyance, when the latter is restricted to fraudulent conveyances only. The statute of *Anne*, it is to be observed, meets the

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evil intended to be put down, by a very different provision from that contained in the statute of *William*, for whereas the statute of *William* is contented with simply declaring the fraudulent conveyance void, thus leaving the grantor and grantee as if the conveyance had never been made, the statute of *Anne*, on the contrary, provides, that the fraudulent conveyance made for the purpose of giving a qualification, shall be deemed and taken against those persons who executed the same, as free and absolute, discharged from any manner of trust or condition for the benefit of the grantor; and, at the same time, it prohibits the grantee from voting under colour of the grant, by making him liable to a penalty of 40*l.* to the common informer, the legislature probably thinking that the practice of granting fraudulent and collusive freeholds would be more effectually checked, by making them good against the grantor, and by frustrating the object of the grant. But this provision never could, in reason or sense, be meant to apply to a conveyance on a real sale of the land, where the seller has already received the purchase money, and has always intended the grant to be good against himself. And, further, the oath directed by the statute of *Anne* appears quite conclusive as to the distinction between fraudulent and real conveyances made for the purpose of creating a vote, namely, "You shall swear such freehold estate hath not been made or granted to you *fraudulently*, on purpose to qualify you to give your vote." The next statute which touches this question is the 18 G. 2. c. 18. s. 5., and the enactment contained therein confirms the distinction to which we have often recurred. That statute enacts, that "no person shall vote in

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respect or in right of any freehold estate, which was made or granted to him fraudulently, on purpose to qualify him to give his vote," thereby, as in the statute of *Anne*, prohibiting the voting, not in every case where the estate is conveyed to him for the object of enabling him to vote, but in such cases only where it is fraudulently made to him for that purpose, that is, where the grantee of the estate, although he appears on the face of the conveyance to take under it, does, in reality, as between the parties themselves, take nothing, or if it is accompanied with a secret trust, for the benefit of the grantor. In the course of one of the arguments before us, some stress was laid by the counsel contending for the illegality of the vote, upon the statute 53 G. 3. c. 49. That statute was passed to explain and amend the statute of *William* the Third, and after reciting that "doubts had been entertained whether devises by will, made in such cases and for such purposes as those mentioned by the former statute, were within the true intent and meaning of that act," the statute enacts "that all devises made by will, made in such cases and for such purposes as by the act of *William* are described, are and shall be taken to be conveyances within the true intent and meaning of the act, as if the same had been therein specially mentioned." And the argument was, that it was singular that the 53 G. 3. should refer to the statute of *William* and not to the statute of *Anne*, unless the statute of *William* was in full operation, independently of the statute of *Anne*. But to this it may be answered, that the reference may well have been made to the statute of *William*, because the intention of the legislature was, that the devise which gave a fraudulent qualification

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should be altogether void, whereas, if reference had been made to the statute of *Anne*, the devise would be good against the heirs of the devisor. The whole object of the statute is, in fact, to write the word "devises" into the statute of *William*, leaving devises to be dealt with in the same manner and by the same rule of law as applied to conveyances. If the devise was fraudulent, if it was never intended to pass the land by means of a secret compact with the devisor in his lifetime, that the devisee would not take, or that he would reconvey, then the statute of *Geo. 3.* would bring the devisee exactly into the same predicament as a fraudulent conveyance under the statute of *William*. But, on the other hand, if the will even openly expressed that a father devised to his son an estate of 40s. a year, intending merely to qualify him to vote for the county, yet if the son entered into possession, and held the land without any secret understanding or reservation on his part, the devise would then be in the same predicament as a conveyance for the same purpose, and would be good. Therefore, upon the whole state of the case, considering the statute of *William* by itself, and with reference also to the latter acts, we think a conveyance made in completion of a *bonâ fide* contract of sale, where the money passes from the buyer to the seller, and the possession also from the seller to the buyer, and where there is no secret reservation or trust whatever on the part of the seller, is not avoided by reason of the object or motive of the purchaser and seller being that of multiplying voices at an election; and as the revising barrister has, by his finding, brought the present case within that description, we think his decision, by which he retained the

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name of these purchasers on the list of voters, was right, and ought to be affirmed.

Decision affirmed. (a)

(a) The following appeals were also decided on the same day : —

RILEY, Appellant, and CROSSLEY, Respondent.

THIS was a consolidated appeal from the decision of *Thomas Horncastle Marshall, Esq.*, one of the barristers appointed to revise the list of voters for the southern division of the county of *Lancaster*. The barrister had disallowed the claims of *Amos Blackburn* and twenty-six other parties, subject to the opinion of the Court on the following case :

By indenture, dated the 22d day of *January*, 1845, and made between one *John Webster* of the first part, *James Dawson* and *Sarah* his wife of the second part, and *John Riley* and *John Crossley* (two of the claimants in the list above referred to) of the third part, in consideration of 916*l.* 14*s.* (700*l.* of which was stated to be paid by *Riley* and *Crossley* to *Webster*, in satisfaction of a mortgage for a term of years which he held on the hereditaments hereinafter mentioned, and the remaining 216*l.* 14*s.* was stated to be paid by *Riley* and *Crossley* to *Dawson*, the reversioner in fee,) fourteen cottages situate at *Butcher Hill* in the said division with their appurtenances, were surrendered, released, and conveyed, unto and to the use of *Riley* and *Crossley* and their heirs for ever. This deed contained the usual covenants and was duly executed. By indenture of the same date with the last deed, but subsequently executed, and made between the said *John Riley* and *John Crossley* of the first part, and the several persons whose names were respectively contained in the schedule at the foot of this deed (and being the said *Riley*, and *Crossley*, *Amos Blackburn*, and all the other claimants named at the foot of this case) of the second part, after reciting the former indenture, and that the purchase money or sum of 916*l.* 14*s.* mentioned in that deed was the proper monies of and equally contributed amongst *Riley* and *Crossley* and the several other parties thereto of the second part, *Riley* and *Crossley* declared and covenanted with the other parties of the second part, that they would stand seised of and interested in the said cottages and hereditaments comprised in the first deed, in trust for themselves and such other parties of the second part respectively, as tenants in fee in common. This deed contains a power for *Riley* and *Crossley* and the survivor or other trustee for the time being, at any time during the lives of any of the parties to the second part, and within twenty-one years from the death of the survivor, with the written consent of the major part in value of the persons for the time being, equitably interested under the trusts therein declared, and against the will of the minority, to lease the said hereditaments and premises for any term of years, or to sell or exchange or make partition of the same, and to repurchase any other freehold hereditaments within the United Kingdom

to be held under the like trusts &c. This deed also contains the usual trustees' receipt and indemnity clauses.

It appeared in evidence that a Mr. John Veevers, in the beginning of January, 1845, applied to Dawson to purchase the cottages in question, which the latter had been offering for sale for some time previously, he being desirous of paying off Webster's mortgage. No contract in writing was entered into between Dawson and Veevers, the object of the latter in entering into the contract being, not to purchase for himself, but for a number of other parties, to procure them qualifications to vote for members of parliament for South Lancashire; Veevers being a member of a certain political association, and actively engaged in procuring qualifications to vote for such persons as were believed to favour the objects of such association.

The first deed was executed by Dawson on the day it bears date, when the whole of the purchase money was paid by Riley, who had previously received the respective shares thereof from all the other parties of the second part of the deed.

It appeared that Dawson had never seen either Riley or Crossley in reference to the purchase, before the day when he executed the conveyance, nor did he even then know who were the other parties on whose behalf the purchase was then made. All the claimants have been in the receipt of their respective shares of the rents of the cottages, which are of sufficient qualifying value to each.

The revising barrister was of opinion, that the object of Riley and Crossley, and of all the other claimants who were parties to the second deed, in purchasing the above cottages, was to procure for each of themselves a qualification to vote for South Lancashire, and he also thought that Dawson, before he executed the conveyance to Riley and Crossley, knew that the object of Veevers in contracting to purchase, and of Riley and Crossley in obtaining such conveyance, was to procure such votes. He believed, however, that the sale on Dawson's part was *bonâ fide*, his object in selling being not for the purpose of conferring such votes on the purchasers, but to dispose of his property to the best advantage. It did not appear that Webster, the mortgagee, was privy to the object of obtaining votes by the transaction.

On the above facts, the barrister was of opinion that the conveyance from Webster and Dawson to Riley and Crossley was a conveyance in order to multiply voices and to split and divide the interest in houses amongst several persons to enable them to vote for members of parliament, and that it was void for such purposes under 7 & 8 W. 3. c. 25.

The case was argued (in Michaelmas term, November 17th) by

Cockburn (with whom was Kinglake Serjt.) for the appellant, and

Byles Serjt. for the respondent, referring to *Winchcombe v. Bishop of*

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*Winchester* (a); *Edwards v. Dick* (b); *The Horsham Case* (c); *Heywood's County Elections* (d); and *Marshall v. Bown* (e).

Cur. adv. vult.

TINDAL C. J. now delivered the judgment of the Court.

This case turns upon the same point of law as that which we have just decided on the appeal from the North Riding of the county of York, in which *Alexander* is the appellant, and *Newman* the respondent. The facts differ in some particulars, but they do in substance bring this case within the same principle as that which we there laid down, namely, that a conveyance made to carry into effect a real *bond fide* contract of sale, where the purchase-money is paid, and the possession taken, without any secret reservation or trust whatever for the benefit of the seller, is not such a conveyance as is intended to be made void by the statute of W. 3., or the subsequent acts, notwithstanding it has been made in order or for the purpose of multiplying voices at an election, or of splitting freeholds; but that the statute intended to avoid such conveyances only made for that object and purpose as were in themselves fraudulent and collusive; and as in this case the revising barrister has found no fraud in fact, but has held the conveyance to be in other respects good, and only void because it was made in order to multiply voices at elections, and has therefore struck out the names of the twenty-five claimants mentioned in the case from the list of voters, we think his decision was wrong, and that the same must be reversed, and the claimants restored to the list.

Decision reversed.

BESWICK, Appellant, and ASHWORTH, Respondent.

BESWICK, Appellant, and AKED, Respondent.

THE material facts stated in these appeals were similar to those of *Riley v. Crossley*. The same counsel, also, appeared on each side.

Cur. adv. vult.

Three other appeals on the same point, which will be found noticed *infra*, having been argued in the meantime,

TINDAL C. J. now said — As to the five remaining decisions of the revising barristers, which stood over to wait the determination of the case wherein *Alexander* is appellant and *Newman* respondent, in most of which it was stated by the learned counsel engaged in them, that they were not distinguishable in any point therefrom, it will be unnecessary to say more than that we think that the case wherein *Beswick* is appellant and *Ashworth* respondent has been properly decided, and that the names

(a) *Hob.* 165.(b) 4 *B. & Ald.* 212.(c) 2 *Fraser*, 3.(d) *P.* 153. 155.(e) *Anti*, p. 278.

of the respondent and the fourteen other claimants therein mentioned should remain on the list, and we affirm the decision accordingly.

In the case wherein *Berwick* is appellant and *Aked* respondent, we think the decision of the revising barrister, by which the name of the respondent and thirty-one other claimants are retained on the list, is a right decision, and we affirm the same.

Decisions affirmed.

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**THORNILEY, Appellant, and ASPLAND, Respondent.**

THIS was a consolidated appeal from the decision of *William Yardley*, Esq., the revising barrister for North *Cheshire*, in which the barrister had allowed the claims of *Robert Brooke Aspland*, and eight other parties, under the following circumstances : —

Upon the parties appearing to support their claim to have their names retained in the list, a deed of appointment and release was produced, dated 1st of *January*, 1842, made between the Rev. *Robert Brooke Aspland* (one of the said claimants) of the first part, *John Hibbert* (another of the said claimants) of the second part, and the seven other claimants, and another party of the third part, whereby, after reciting that the said *Robert Brooke Aspland* was seised of certain freehold premises, being the same in respect of which the said parties thereto of the first, second, and third parts respectively claimed to be upon the list of voters), and reciting that the said parties of the second and third parts had contracted with the said *Robert Brooke Aspland* for the purchase from him of nine tenth parts of the said premises at a sum of 180*l.*, and that he had agreed to convey the whole of the said premises to the said *John Hibbert*, and his heirs, in trust for all the said parties thereto, as well of the first as of the second and third parts, subject to a certain mortgage thereon; it was witnessed by the present indenture, that in consideration of the said sum of 180*l.* to the said *Robert Brooke Aspland* paid in equal shares and proportions by the parties thereto of the second and third parts, he, the said *Robert Brooke Aspland*, did thereby direct and appoint, and also grant, bargain, and release, unto the said *John Hibbert* and his heirs, all the said hereditaments and premises, to have and to hold the same unto the said *John Hibbert* and his heirs, to the use following, that was to say, as to one tenth part of and in the said premises thereby appointed and released, the whole into ten equal parts or shares being considered as divided, to the use of the said *John Hibbert* and his heirs, and as to the other nine parts or shares thereof respectively, to the use of the said parties thereto of the first and third parts respectively, and their respective heirs and assigns, share and share alike, as tenants in common.

The hereditaments and premises so conveyed were of the annual value of 22*l.* after satisfying the interest on the said mortgage. The payment



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of the money stated in the deed as the consideration for the said conveyance, was found to have been made at the time of the date and execution thereof, and was an adequate consideration for the nine tenth parts of the said hereditaments and premises so conveyed by the said *Robert Brooke Aspland* as aforesaid.

It was objected that, from the facts which were apparent on the face of the deed, the transaction came within the 7 & 8 W. 3. c. 25. s. 7.; the object being evidently for the multiplying of votes, an object to which the vendor himself must have been privy.

The decision of the revising barrister upon the whole case was, that the names of the claimants should be retained on the said list, and his decision on the point of law in question was, that the said conveyance was not void under the provisions of the above mentioned statute.

When the case was called on (*January 15th*), *Welsby* (with whom was *Channell Serjt.*), for the appellant, offered no argument.

*Cockburn* (with whom was *Kinglake Serjt.*), for the respondent, cited *Marshall v. Bown (a)*.

*Cur. adv. vult.*

The judgment of the Court was now delivered by

TINDAL C. J. We think that in the case wherein *Thorniley* is appellant and *Aspland* respondent, the decision of the revising barrister, that the names of the nine claimants should be retained in the list of voters, was right, and we affirm the same.

Decision affirmed.

#### NEWTON, Appellant, and HARGREAVES, Respondent.

A *bonâ fide* conveyance by a father to his two sons, in consideration of natural love and affection, though made principally for the purpose of entitling them to be registered as voters, is not void, as being within the operation of stat. 7 & 8 Will. 3. c. 25. s. 7.

THIS was a consolidated appeal from the decision of the same revising barrister as in the last case.

*Robert Halstead Hargreaves*, the father of the two claimants, being seised in fee of a messuage and farm at *Mobberley*, in the county of *Chester*, and also of certain hereditaments in the southern division of the county of *Lancaster*, in the month of *December*, 1844, proposed to the two claimants to execute a deed of gift in their favour of sufficient freehold property in both those counties to enable them to be registered as voters for the said counties, and a deed accordingly was executed on the 30th *January*, 1845, by which the said *Robert Halstead Hargreaves*, in consideration of natural love and affection, conveyed to the two claimants and their assigns, for the life of the said grantor, two closes of land, part of *Holt's* farm in *Mobberley* aforesaid, and a like estate in the said hereditaments and premises in *South Lancashire*. The deed was prepared by

(a) *Ante*, p. 278.

the solicitor of the said *Robert Halstead Hargreaves*, the grantor, and was received by one of the claimants from such solicitor a few days before it was produced at the Court aforesaid. Before the execution of the said conveyance, the said claimants had, by the permission of the said grantor, depastured their horses on the said closes in *Mobberley*, and had continued to do so subsequent to the date of the said deed, and the grantor had also continued to depasture his cattle thereon since the date of the said conveyance, and had never paid or agreed to pay rent to his sons for the said closes. The yearly value of the said closes in *Mobberley* aforesaid was 96*l*. The said conveyance was made by the grantor to the two claimants, *principally for the purpose of entitling them to be registered as voters as aforesaid, but with a view also of making a provision for them.*

It was objected that this transaction was fraudulent, being for the mere purpose of creating votes, and that the conveyance came within the operation of the stat. 7 & 8 *W. 3. c. 25. sect. 7.* and was void.

The decision of the revising barrister upon the whole case was, that the names of the said claimants should be retained upon the register, and his decision upon the points in question was, first, that the said deed was not void on the ground of fraud, and secondly, that it was not void under the statute 7 & 8 *W. 3. c. 25. s. 7.*

The case was called on upon a former day in this term (*January 19th*), when *Cockburn* (with whom was *Kinglake Serjt.*) appeared for the appellant, and *Granger* for the respondent.

*Cur. adv. vult.*

**TINDAL C. J.** In the case wherein *Newton* is appellant and *Hargreaves* respondent, we think the decision of the revising barrister, that the two names mentioned in the case should be retained on the register, is a right decision, and we affirm the same. This case is so far distinguishable from all the former, that in this the transaction is not that of purchase and sale, nor is the consideration that of money. But this is a conveyance by a father to his two sons, in consideration of natural love and affection; but inasmuch as the law acknowledges the consideration of natural love and affection in the case of father and son to be as good a consideration to raise a use as a pecuniary consideration from strangers, and as there is no fraud in fact found by the barrister, and we are not to infer it from any circumstances stated in the case, all we have to do is, to consider the question reserved for us, viz. whether the conveyance is void by reason of the statute, and upon this point we come to the same decision as before.

Decision affirmed.

#### **RAWLINS, Appellant, and BRENNER, Respondent.**

THIS was also a consolidated appeal, in which *Thomas Horncastle Marshall, Esq.*, one of the revising barristers for *South Lancashire*, had disallowed

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the claim of *James Peck* and four other persons, who claimed to vote for the southern division of *Lancashire*, in respect of their several one-fifth shares of a house situate in *Rupert Place, Blake Street*, in the township of *Liverpool*, under the following circumstances: —

The claimants, who are all brothers, being desirous of obtaining qualifications to vote for *South Lancashire*, made applications in the month of *January* last to certain parties to procure for them freehold premises for this purpose; but not succeeding in obtaining any suitable purchase, their father, *Watson Peck*, by indenture dated the 18th day of *January* last, conveyed the said house in *Rupert Street* (being part of other property there situate, of which the father was owner) to the said claimants as tenants in common in fee. The purchase-money was stated in the deed to be 48*l.*, which sum was paid by the sons to the father. The house produces a rent of 12*l.* per annum, which the claimants have been in the receipt of since the conveyance to them.

The revising barrister was of opinion, from the evidence, that the sole object of the claimants in buying the said house was to procure for themselves votes and multiply voices for members of parliament for the southern division of *Lancashire*, and for that purpose to divide their interest in the said house amongst each other; and that the sole object of their father in selling them such house was to enable them to do so, and he considered such conveyance void for this purpose under the 7 & 8 *W. 3. c. 25.*

The case was argued on the same day as *Newton v. Hargreaves*, by *Crompton* for the appellant, and *Arnold* for the respondent.

*Cur. adv. vult.*

TINDAL C. J. now said, — In the case wherein *Rawlins* is appellant and *Bremner* respondent, in which the revising barrister held the conveyance made under circumstances substantially the same as those in the case of *Alexander* appellant and *Newman* respondent, to be void, by reason of the statute of *W. 3.*, we think the decision is wrong, and reverse the same accordingly.

Decision reversed.

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## [HILARY VACATION.]

The following cases may be appropriately inserted in this place : —

NEWTON, Appellant, and The Overseers of  
MOBBERLEY, Respondents.

February 23.

NEWTON, Appellant, and The Overseers of  
CROWLEY, Respondents.

THESE were appeals from the decision of *William Yardley, Esq.*, the revising barrister for North *Cheshire*.

The Court will not determine whether the circumstances attending the grant of a rent-charge are such as show the grant to be void, upon the ground of fraud ; that being a matter of fact which the barrister must find for himself.

In the former case the revising barrister had allowed the claim of *John Wright* to vote in respect of a freehold rent charge under the following circumstances :

A deed was produced, dated 30th of *January*, 1845, made between *James Wright* (the father of the claimant) of the one part, and *John Wright*, the claimant, of the other part, by which, after reciting that the said *James Wright* was seised in fee of a certain messuage, &c., in the township of *Mobberley*, he (the said *James Wright*), in consideration of the natural love and affection which he bore towards his son (the said *John Wright* the claimant), granted unto the claimant, his heirs and assigns, a yearly rent of 2*l.* 2*s.*, to be yearly issuing out of the said messuage, &c., payable half yearly on the 30th of *June* and 30th of *December* in each year, the first payment to be made on the 30th of *June* then next, with powers of distress in case the said rent should be in arrear. The grantor was at the time of the said

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grant, and still is, tenant of a farm belonging to the father of one of the members of parliament for the said northern division of the said county of *Chester*, and a few days before the day of the date of the said deed, the grantor was at the house of the said landlord, with the land steward of the latter, when instructions were given by the grantor to his said landlord's attorney to prepare the before-mentioned deed, which he did, and delivered it to the said land steward, who attended at the grantor's house at *Mobberley* on the day of the date of the said deed, and got it executed by both the parties thereto, and attested it. The said deed was left in the possession of the said grantor, and the claimant received it from his custody to produce at the said registration court. The first half year's rent, due 30th of *June*, had been duly paid to the grantee. The object of the said grantor, in creating the said rent-charge, was to entitle the said claimant to be registered as a voter for the said northern division of *Cheshire*, and such object was mentioned by the said grantor at the time the instructions for the said deed were given. It did not appear that the said grantee had, previously to or since the execution of the said deed, entered into any engagement as to the manner in which he should exercise his right of voting when entitled thereto. It was objected that under the above circumstances the said transaction was void on the ground of fraud; and was also within the statute 7 & 8 *W. 3. c. 25.*, being for the sole purpose of "multiplying voices," and that the said deed was therefore also void.

The decision of the revising barrister upon the whole case was, that the name of the said *John Wright* should be retained upon the said list; and his decision upon the point of law in question was that the said

transaction was not void on the ground of fraud; and that the said deed was not void under the provisions of the statute referred to.

In the latter case, the revising barrister had allowed the claims of *James Pickup* and another party to vote in respect of a rent-charge charged upon the same estate under the following circumstances:

A deed was produced, dated 23rd of *January*, 1845, made between *John Lord* of the one part, and the said two claimants of the other part reciting that the said *John Lord* was seised in fee of two equal undivided fifth parts of and in certain hereditaments, therein described, in the township of *Crowley*, and that being so seised, he, the said *John Lord*, had agreed to grant unto *John Pickup* and *John Pickup Lord*, the claimants, a yearly rent-charge of 5*l.*, to be issuing out of the said two equal undivided fifth parts of the said hereditaments; and by the said deed it was witnessed that, in pursuance of the said agreement, and in consideration of 10*s.*, &c. by *James Pickup* and *James Pickup Lord* to *John Lord* paid, the said *John Lord* did grant to *James Pickup Lord*, their heirs and assigns, a yearly rent-charge of 5*l.*; to be issuing out of the said two undivided fifth parts of the said hereditaments, payable half yearly, the first payment to be made on the 12th of *May* then next, with power of distress to recover the said rent-charge if in arrear. This deed was proved by the attesting witness thereto to have been executed by *John Lord*, the grantor, who is an attorney, on the day of the date thereof, having been prepared in his office, but the grantees were not present at the time. The deed was kept in the custody of the grantor, together with other deeds belonging to the said *James Pickup Lord*, one of the claimants, and

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was now produced therefrom. The only consideration expressed in the deed was nominal, and there was no proof of any other consideration, nor that the grantees had received the said rent-charge or any part thereof. The grantor was the father of one of the claimants, and the father-in-law of the other. The property out of which the rent-charge was granted was of sufficient value to entitle the said grantees to vote. The object of the said parties to the said deed was thereby to entitle the said claimants to be registered as voters for North *Cheshire*. It was objected that the said grant of the said rent under the above circumstances was void on the ground of fraud; and that it was a transaction for the sole purpose of "multiplying voices," and within the provisions of the seventh section of 7 & 8 *W. 3. c. 25.*, and therefore also void.

The decision of the revising barrister upon the whole case was, that the names of the said claimants should be retained on the said list; and his decision upon the points in question was, that under the circumstances proved, the transaction was not void on the ground of fraud, and that the deed was not made void by the statute 7 & 8 *W. 3. c. 25. s. 7.*

The appeals was called on in their turn on the 15th of *January*, when *Cockburn* (with whom was *Kinglake Serjt.*) appeared for the appellant, but offered no argument.

No counsel appeared for the respondents.

*Cur. adv. vult.*

The judgment of the Court was now delivered by

TINDAL C. J. In the case of *Newton*, appellant, and the Overseers of *Mobberley*, respondents, the re-

vising barrister appears to have reserved two questions for the opinion of the Court; first, whether the circumstances attending the making of the grant of the rent-charge are such as to show the grant to be void, as founded upon *fraud in fact*; and, secondly, whether it is void as being made for the purpose of splitting freeholds and multiplying voices at elections, in violation of the stat. 7 & 8 *Will. 3. c. 25*. As to the first point — fraud in the making of the grant itself — we think the revising barrister must in all cases find the fact one way or the other for himself, such fraud not being a question of law to be referred to the Court. Indeed, it is to be observed in this particular case, that he has expressly stated his own opinion to be, that there was no fraud in fact. As to the second point, we think the case falls directly within the rule laid down by us in the case of *Alexander*, appellant, and *Newman*, respondent (a), and consequently hold the grant not to fall within the statute.

The decision of the revising barrister is therefore affirmed in this case, and also in the following one of *Newton*, appellant, and *The Overseers of Crowley*, respondents, which arises upon facts substantially the same as the present.

Decisions affirmed.

(a) *Antè*, p. 404.

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January 29.

Cook, Appellant, and LUCKETT, Respondent.

The name of the occupier of the house No. 3, *Golden Lane*, was inserted in the rate-book, by mistake, as the occupier of No. 4. Under an agreement with the tenant, the landlord had paid all the rates and taxes due in respect of No. 3, and the tenant had paid the landlord all his rent. *Held*, that the tenant had been *bond fide* called upon to pay the rate by the insertion of his name in the rate-book, and had *bond fide* paid it, through his landlord, within the meaning of stat. 6 *Vict.* c. 18. s. 75.

*Semble*, that the tenant was rated within the meaning of stat. 2 *Will.* 4. c. 45. s. 27., notwithstanding No. 3 was described as No. 4; but *Held*, that at all events, the "inaccurate description" was cured by stat. 6 *Vict.* c. 18. s. 75.

**T**HIS was an appeal from the decision of *Thomas James Arnold, Esq.*, the revising barrister for the city of *London*.

The respondent duly objected to the name of the appellant being retained on the list of persons entitled to vote in the election of members for the city of *London* in respect of the occupation of a "house, No. 4, *Golden Lane*," in the parish of *St. Giles* without, *Cripplegate*.

The appellant also duly claimed to have his name inserted in the said list in respect of the occupation of a "house, No. 3, *Golden Lane*," in the same parish.

The revising barrister expunged the name of the appellant from the list, and disallowed the claim, subject to the following case:—

The qualification of the appellant was duly proved in respect of the occupation of a house No. 3, *Golden Lane*, except as to the sufficiency of the rating. He was rated to all the poor-rates as the occupier of No. 4, *Golden Lane*; but he did not occupy No. 4, and he was inserted in the rate-book for No. 4, by a mistake of the overseers. He held the house No. 3 at an annual rent of 27*l.*, and had an express agreement with his landlord that the latter should pay all the rates and taxes in respect of the premises. His landlord had called upon him to pay, and he had paid all the rent due in respect of the said house, and the landlord had been called upon to pay and had paid all poor-rates due in respect of the said house. It was contended on behalf of the appellant

that though the premises so occupied by him were inaccurately described in the said poor-rate, yet that he was the person liable to be rated for the said premises, and had (by his landlord, specially constituted by his agreement as his agent in that behalf) been *bonâ fide* called upon to pay, and had *bonâ fide* paid all the rates due in respect of such premises within the meaning of the seventy-fifth section of the 6 *Vict. c. 18.*, and therefore that he was to be considered as having been rated and paid all rates in respect of the said premises, notwithstanding the inaccurate description in the said rate of the said premises so occupied by him. The revising barrister decided *that this was an inaccurate description within the 6 Vict. c. 18. s. 75., but that the facts proved did not shew that the appellant had been bonâ fide called upon to pay, and had bonâ fide paid the rates due in respect of such premises. If the Court should be of opinion that the said decision was wrong, the name of the appellant was to be inserted in the said list of voters as follows : —*

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v.  
LUCKETT.

William Cook.	3, Golden Lane.	House.	3, Golden Lane.
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*Welsby* for the appellant. This case turns upon the construction of the seventy-fifth section of the stat. 6 *Vict. c. 18.*, and raises two questions; first, whether there was an inaccurate description of the house occupied by the appellant; and, secondly, whether, assuming the description to be inaccurate, the appellant was not *bonâ fide* called upon to pay, and did not *bonâ fide* pay the rate. It may be conceded that the description was inaccurate, but it is submitted that the revising barrister ought, nevertheless, to have inserted the name of the

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appellant in the list of voters. The seventy-fifth section of the act, after providing for the right of occupiers of 10l. houses in cities and boroughs to vote, if duly registered and rated, goes on to enact, that where any such person, "being the person liable to be rated for such premises, shall have been *bond fide* called upon to pay in respect of such premises all rates made for the relief of the poor in such parish or township during the time of such his occupation so required as aforesaid, and such person shall have *bond fide* paid, on or before the 20th day of *July* in such year, all sums of money which he shall be called upon to pay as rates in respect of such premises for one year previously to the 6th day of *April* then next preceding, such person shall be considered as having been rated and paid all rates in respect of such premises, &c., and be entitled to be registered in respect of the same in any year, any misnomer or inaccurate or insufficient description in any rate of the person so occupying, or of the premises occupied notwithstanding." The appellant was clearly liable to be rated for No. 3, which was a house of sufficient value to confer the franchise, and having entered into an express agreement with the landlord that he should pay the rates, and that the appellant should pay a proportionate amount in the shape of rent, the payment of the rates by the landlord operated as a payment by the tenant; *Hughes v. The Overseers of Chatham* (a); *Wright v. The Town Clerk of Stockport*. (b) Those cases turned upon the twenty-seventh section of the Reform Act, but the additional words "*bond fide*" introduced in the seventy-fifth section of the stat. 6 *Vict.* c. 18. do not render

(a) *Antè*, p. 51.(b) *Antè*, p. 32.

the decisions of the Court less applicable to the present case. The appellant, therefore, being liable to pay, has *bonâ fide* paid, and, it is submitted, has also been *bonâ fide* called upon to pay, the rate. The seventy-fifth section does not say *by whom* the party who is the occupier is to be called upon to pay, and if an actual *payment* by the tenant through the landlord, as his agent, be sufficient, then it is confidently submitted he may also be *called upon to pay* through his landlord.

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*Grove* for the respondent. The main question for the consideration of the Court will be, whether a calling on the landlord is such a calling on the tenant as is contemplated by the seventy-fifth section of the act of *Victoria*. *Wright v. The Town Clerk of Stockport* (a) shews that the object of the twenty-seventh section of the Reform Act was, that the tenant should be personally rated in respect of the premises occupied by him. The thirtieth section of the same act seems also to point to the necessity of a personal rating, otherwise it would not have been necessary to provide for a case in which the name of a party had been omitted from a rate, by enabling him to send in a claim to be rated. The seventy-fifth section of the Registration Act also contemplates a personal rating by the words "*bonâ fide*" which are used in it, and if so, then a *bonâ fide* calling upon to pay means a personal calling; *Moss v. The Overseers of St. Michael, Lichfield*. (b) [*Maule J.* Suppose the appellant had sent the amount of the rate to the overseer; would not that have been sufficient?] It would have been sufficient as a payment, but he ought also to have been called upon to pay. [*Maule J.*

(a) *Antè*, p. 32.(b) *Antè*, p. 184.

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I conceive that he was called upon to pay by being placed on the rate-book.] That, it is submitted, would not be sufficient; *Cullen v. Morris*. (a)

*Welsby*, in reply, was stopped by the Court.

TINDAL C. J. The alteration that has been made in the case (b) has relieved it from all doubt or difficulty. It appears now that the revising barrister thought that the mistake of No. 4 for No. 3 was one that brought the case within the seventy-fifth section of the stat. 6 *Vict. c. 18.*, as being an inaccurate description of the premises, and therefore, that it was amendable under the powers given him by that act. As far therefore as that part of the case is concerned, there is an end of it, and the only point reserved for our opinion is, whether it is shewn, by the facts stated in the case, that the appellant had been *bonâ fide* called upon to pay, and had *bonâ fide* paid the rates due in respect of the premises occupied by him. It appears to me that a payment of the rates by the landlord under the circumstances referred to, is a *bonâ fide* calling upon the tenant to pay the rate in respect of such premises, as well as a *bonâ fide* payment of the rate. I cannot understand why the words "*bonâ fide* called upon to pay" should of necessity mean a personal call or a personal demand. The tenant's name being on the parish rate-book, he is the only person that can be called upon; he it is that must answer the demand, either by himself or somebody else; and he it is who is liable to a distress if the rate be not

(a) 2 *Stark. N. P. C.* 577.

(b) During the argument, the case had been handed to the revising barrister, who was in court, and who returned it with the addition of the passages marked in italics.

paid. In this way, therefore, he is in law called upon to pay the rate, and surely no greater notoriety could be given to the call than by placing his name on the rate book. It appears to me, therefore, that the decision of the revising barrister is wrong.

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MAULE J. It appears to me, also, that there was a *bonâ fide* payment of the rate by the tenant, and that he was *bonâ fide* called upon to pay the same, within the meaning of the seventy-fifth section of the statute of *Victoria*. It is, however, by no means clear that it is necessary to have recourse to that section at all, because I think that, on the true construction of the twenty-seventh section of the Reform Act, the vote ought to have been allowed. That section confers the elective franchise on 10% householders, and a person might set up a claim to vote in respect of the occupation of premises which he really never occupied. The section, therefore, goes on to require, amongst other things, that the occupier shall have been rated in respect of the premises for which he claims to vote, and that he shall have paid all rates payable in respect of such premises up to the 6th of *April*. We have had cases referred to on the subject of the payment of rates, and it has been said that such payment should be made by the hand of the party who is liable to the payment. Now, generally speaking, an agent, properly authorized, may do what it is not convenient for a man to do with his own hand, and if the money comes from the pocket of the individual liable, it is a matter of no importance through whose hands it passes. Where *A.* pays out of the funds of *B.*, or pays out of his own funds, and charges *B.* with the payment on account, the payment is made

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by *B.* The object of the act in requiring a *bond fide* payment was probably to guard against a gratuitous payment by a candidate or his agent on the eve of an election. Here, however, I think there was a complete and sufficient payment, both within the Reform and the Registration Acts. The main question, however, is, whether the appellant can be said to have been *bond fide* called upon to pay the rates, within the meaning of the seventy-fifth section of the latter act. Now, it is to be remarked that, although that section was no doubt intended to embrace many cases to which the twenty-seventh section of the Reform Act already applied, it was also intended to remove doubts which might arise upon the construction of the last-mentioned act. The two sections are *in pari materia*, and therefore the decisions which have been pronounced upon cases affected by the twenty-seventh section of the stat. 2 *W.* 4. c. 45., are applicable to those which refer to the seventy-fifth section of the statute of *Victoria*. I think that in this case, there was a sufficient rating under the stat. 2 *W.* 4. c. 45. s. 27., and if so, then the rating would be sufficient under the seventy-fifth section of the Registration Act. Now, by putting a person on the rate-book, you, in effect, inform him that he is called upon to pay certain sums of money to certain persons, namely, to the overseers. The meaning of the seventy-fifth section is, that if there be any such inaccuracy on the face of the rate as to render it doubtful whether he is the party intended to be assessed, that inaccuracy shall be considered as non-existing, provided there has been a substantial compliance with the provisions of the former act. Cases might occur in which it would not appear from the rating that the party intended to be rated was

called upon to pay, but here the only inaccuracy is the substitution of a wrong number for the house which he occupies. His name is placed on the rate, and he is thereby informed that if he fails to pay, a distress may be levied on his goods. Surely that is a more effectual "calling upon to pay" than if the overseers were to knock at the door of the house, and simply request the occupier to pay the rates. I am, therefore, of opinion that the appellant has been *bonâ fide* called upon to pay, and has *bonâ fide* paid.

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CRESSWELL J. I, also, am of opinion, that the appellant's name ought to be inserted in the register. I doubt whether the assistance of the seventy-fifth section of stat. 6 *Vict. c.* 18. was required in this case. The occupier of No. 3 was liable to be rated for that house, and was, in fact, rated, but the overseers make a mistake and call it No. 4. He was, therefore, rated for the premises which he occupied within the meaning of the twenty-seventh section of the Reform Act. Then, as it appears that the rates have been paid by the landlord, in pursuance of an agreement with the tenant to that effect, it is impossible to say, after the decisions already pronounced by this Court, that this was not such a payment by the tenant as satisfied the requirements of the Reform Act. But, supposing it were doubtful, whether the rating was sufficient within 2 *W. 4. c.* 45. s. 27., the stat. 6 *Vict. c.* 18. s. 75. cures the defect, and makes the party liable to be rated, and who has been called upon to pay, and has paid the rates, entitled to be registered. This latter section does not introduce any new law, but was inserted in order to remove doubts as to the true construction of the former act, as appears



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by the terms of its recital. Suppose, in the case of misnomer, that the name of "*John Smith*" were inserted in the rate-book, instead of "*William Thompson*;" the overseer calls on the party, and points out to him, that he has been rated by the former name; *Thompson* then pays the rates, and that would clearly be a sufficient payment, nor could the overseers afterwards say, that he was not rated.

ERLE J. The question is, whether the appellant has been *bonâ fide* called upon to pay, and has paid. When a name is put upon the rate with the intention of rating a particular individual, he is called upon to pay within the meaning of stat. 6 *Vict. c. 18. s. 75*. I think, also, that the payment was sufficient.

Decision reversed.

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PARIENTE, Appellant, and LUCKETT, Respondent.

January 29.

**A**T a Court held before *Thomas James Arnold, Esq.*, the revising barrister for the city of *London*, *William Endell Luckett* duly objected to the name of *Joshua Pariente* being retained on the list of persons entitled to vote in the election of members for the city of *London*, in respect of the occupation of a "house, No. 18, *Coleman Street*," in the parish of *St. Stephen, Coleman Street*. The revising barrister expunged the name of *Pariente* from the list, subject to an appeal to the Court of Common Pleas upon the following case: —

The qualification of the appellant was duly proved in all respects except as to the sufficiency of the rating. There were five poor-rates made in the said parish in the year ending the 31st of *July*, 1845. The first rate was made on the 17th of *October*, 1844; the second rate was made on the 17th of *January*, 1845; the third rate was made on the 3d of *April*, 1845. The dates of the subsequent rates are not material. *Thomas Haynes*, the landlord of the house, 18, *Coleman Street*, was rated, and paid all the rates in respect thereof. The appellant was not rated to the said *October* rate, nor did his name in any way appear therein. On the 1st of *January*, 1845, a claim to be rated in respect of the said house (18, *Coleman Street*) was served on behalf of the appellant upon the overseers of the said parish, and at that time there was no rate due in respect of the said house.

without any intention to rate him for any thing. *Held*, that as the question of rating was one which ought to be decided by an inspection of the rate itself, any evidence of the intention with which it was made should have been rejected.

The name of an occupying tenant of a house was inserted in the rate-book between that of his landlord, who was rated for the house in question, and that of *A. B.*, but there appeared nothing opposite the tenant's name in the other columns of the rate, nor was there any bracket connecting his name with that of the landlord, though the figure 2 was placed before the landlord's name, and the figure 3 before the name of *A. B.* *Held*, that the tenant was sufficiently rated for the house.

At the revision, one of the parochial officers stated that the tenant's name had been placed upon the rate in consequence of his having made a claim to be rated, but

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At the time that the assessment to the said *January* rate was made out, the appellant was not rated thereto, nor did his name appear upon such last-mentioned rate; but afterwards, and before the declaration at the foot of the said last-mentioned rate was signed by the churchwardens and overseers, pursuant to the provisions of the 6 & 7 *W. 4. c. 96.*, the name of the appellant was inserted as an interlineation upon the said rate between the name of the said *Thomas Haynes* and that of another party, who was rated for other premises; but without any bracket or other connecting mark, and without any particular premises or amount of rating being carried out in the several columns referring to such particulars. The rate in this respect was in the following form: —

2	Thomas Haynes, Joshua Pariente.	House.	18, Coleman Street.	£ 67	£ 50	&c.
3	A. B. (another party.)	House.	&c.      &c.	&c.	&c.	&c.

The name of the appellant was inserted in a similar manner upon the said *April* rate and the subsequent rates; but upon a separate line and not as an interlineation, and such last-mentioned insertions were made at the time the assessment was made out. One of the parochial officers stated that the name had been so placed upon the rate in consequence of the claim so made by the appellant, but without any intention to rate him for any thing. The revising barrister decided that the appellant was not rated to the said *January* rate and the subsequent rates. If the Court should be of opinion that the said decision was wrong, the name

of the appellant was to be re-inserted in the said list of voters as follows : —

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Joshua Pariente.	Coleman Street.	House.	Coleman Street.
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Twenty-seven other cases were consolidated with the above.

*Welsby* for the appellant. There is no question raised here about the *October* rate, to which it is clear that the appellant, having made his claim on the 1st of *January*, must be deemed to have been rated within the meaning of the thirtieth section of the Reform Act (*a*). With regard to the *January* and subsequent rates, it is submitted that the appellant was rated, according to the true construction of the stat. 2 *W. 4. c. 45. s. 27*. It is found in the case that the name of the appellant was inserted in the rate under No. 2, and that shews that he was rated for the same premises as his landlord. *Wright v. The Town Clerk of Stockport* (*b*) is a direct authority in favour of the appellant.

*Grove*, for the respondent, was then called upon by the Court. In *Wright v. The Town Clerk of Stockport* (*b*), the names of the landlord and tenants were connected by a bracket, evidencing the intention of the overseers to rate them all. [*Tindal* C. J. Lord *Coke* says, that there is sometimes great virtue in an "&c.," but I know of no authority for clothing a bracket with importance.] One of the overseers stated, as the case expressly finds, that the appellant's name had been placed upon the

(*a*) See *Rushell v. Lockett*, antè, p. 398.

(*b*) Antè, p. 32.

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rate, in consequence of the claim which he had made, but without any intention to rate him. [*Maule J.* Whatever the intention might be, the effect of putting the appellant's name on the rate would be to make him liable to pay it.] In *Moss v. The Overseers of St. Michael, Lichfield* (a), the Court held, that an occupier who had actually paid the rent with his own hand was not rated, because, on the face of the rate, another party appeared to have been charged. [*Maule J.* There the name of the party who paid the rate did not appear upon the rate at all; here the appellant's name is on the rate, and the blank left opposite the name is equivalent to "ditto."]

*Welsby* was not called upon to reply.

TINDAL C.J. I think that, in this case, the statement made by one of the overseers must be thrown overboard altogether, for if all the overseers had said that there was no intention to rate the appellant, by putting his name on the rate, that could have no effect upon the construction of a written instrument. We are bound to give the rate a reasonable construction, and to consider it in the same way as if we were called upon to declare the meaning of any other instrument in writing. There are several columns in the rate, and, upon looking at the second column, we find the name of *Haynes*, and all the columns opposite his name, properly filled up; then, the name of the appellant appears immediately under that of *Haynes*, but the other columns are left blank. Now, this mode of inserting the name of the appellant must have had some meaning, and it appears to me that we must consider the blanks oppo-

(a) *Antè*, p. 184.

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site the name of "*Pariente*" as if filled up in the same way as those opposite the name immediately preceding; or that we must consider *Haynes* and *Pariente* jointly rated in respect of the premises No. 18, *Coleman Street*. The Nos. 2 and 3, which appear in the first column, shew that they were rated in respect of the same house, as No. 3 is placed opposite the name which follows that of the appellant. I think, therefore, that the revising barrister was wrong.

MAULE J. With respect to the first rate, it is conceded that the appellant did all that was necessary to enable him to reap the benefit of the thirtieth section of the Reform Act. To decide the question raised as to the other rate, we must look at the rate itself, and upon referring to it, there does not appear any room to doubt that the appellant was rated. The revising barrister seems to have been embarrassed by what one of the overseers said, but the true construction of the rate is to be ascertained by reasoning quite irrespective of what the intentions of the overseers might have been, in placing the name of the appellant upon the rate. It might be that they did not intend to let him have a vote, but their saying so would have no more effect than if an obligor who had signed and sealed a bond were subsequently to say that he had no intention of binding himself thereby. The real question is, whether the appellant was rated or not, and as his name was placed upon the rate, and the blanks left opposite his name are just as effective as if the word "ditto" had been inserted in each column, I think the decision of the revising barrister ought to be reversed.

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CRESSWELL J. I am of the same opinion. Looking at the extract from the rate-book, I think we are bound to hold that the appellant was sufficiently rated. The number in the first column is quite enough to shew that he was rated in respect of the previous subject-matter of the rate.

ERLE J. I think the revising barrister was quite justified in asking for an explanation of the manner in which the rate was made, when an interlineation appeared on the face of it, but when he had ascertained the circumstances under which it was made, it was unquestionably his duty, as a judge, to construe the written instrument himself. I have no doubt myself, looking at the rate, that the name of *Pariente* was placed upon it in respect of the house No. 18, *Coleman Street*. The statement of the overseer, therefore, has nothing to do with the matter. The insertion of the appellant's name was enough to make him liable to the payment of the rate, and I, therefore, think the decision of the revising barrister was wrong.

Decision reversed.

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COOGAN, Appellant, and LUCKETT, Respondent.

January 29.

**THIS** was an appeal from the decision of the revising barrister for the city of *London*, who had expunged the name of *Henry Coogan* from the list of persons entitled to vote in the election of members for the said city, subject to the following case : —

The qualification of the appellant was duly proved in all respects except as to the value of the house, No. 4, *Redcross Passage*, in the parish of *St. Giles* without, *Cripplegate*, occupied by him. The rent paid by the appellant for the house in question was 4s. 9d. per week, amounting to 12l. 7s. per annum. The landlord paid all the rates and taxes assessed upon the said house. The landlord of the said house was also the owner or lessee of other houses in the same parish, which houses were also let at weekly lettings; and he compounded for his poor-rates for all such houses, and also for the said house so occupied by the appellant; and the said landlord was assessed in the poor-rate in respect of the said house at 5l. per annum. It was not shewn that there was any local act authorizing such composition, but it was assumed to have been made under the 59 G. 3. c. 12. s. 19. The rates, commonly known as tenants' rates, payable in the parish, amounted to 5s. 11d. in the pound per annum; viz. poor-rates 3s.; consolidated rate 1s. 4d.; police-rate 7d.; and church-rate 1s. It was proved, that the said house, if the same were rated to a tenant, would be assessed at the rateable value of 8l. per annum, upon which assessment, the

Whether premises are of the clear yearly value of 10l., within the meaning of 2 Will. 4. c. 45. s. 27., is a question of fact, upon which the revising barrister must decide for himself.

Per *Erle J.*, the fair principle in ascertaining the value is, to inquire what the premises would let for to a tenant, and deduct therefrom what a tenant would ordinarily have to pay.



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tenants' rates would amount to 2*l.* 7*s.* 4*d.* per annum. It was contended on behalf of the appellant, that no other rates or taxes, except the poor-rates and window-tax, ought to be deducted from the amount of rent actually paid, in order to ascertain what was the "clear annual value" of the said house, within the meaning of the 2 *W. 4. c. 45.*; and, secondly, that if all the said tenants' rates were to be deducted, yet that such deductions should be made only for the amount for which the premises were assessed to the landlord, viz. 5*l.*, and not from the rent actually paid by the tenant; and that no greater amount than that which the landlord was actually called upon to pay could legally be deducted. The revising barrister was of opinion that the clear annual value of premises must be taken to mean the rent at which the said premises might reasonably be expected to let from year to year, free of all tenants' rates and taxes at least (6 & 7 *W. 4. c. 96. s. 9.*); that is to say, the rent which the landlord would in such case receive; but inasmuch as there was no evidence before the revising barrister to enable him to ascertain what the said house in question would be let for under such circumstances, he considered that the proper principle for ascertaining the clear annual value of the house in question was, to deduct from the rent actually paid by the appellant, viz. 12*l.* 7*s.*, the amount of tenants' rates and taxes calculated upon the rateable value of the said house, if assessed to a tenant, viz. 2*l.* 7*s.* 4*d.*, and therefore that the said house was not of the clear yearly value of 10*l.* If the Court should be of opinion that the said decision was wrong, and that either of the principles of calculating the value contended for on behalf of the appellant was correct, the name of the

appellant was to be re-inserted in the said list of voters as follows : —

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Henry Coogan.	Red-cross passage.	House.	4, Red-cross passage.
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*Welsby* for the respondent. It is submitted that the words “clear yearly value” in the twenty-seventh section of the Reform Act, have reference to the value of the premises as respects the landlord. This was the principle of calculation laid down by a committee of the House of Commons in the *Woodstock case* (a). Here the value to the landlord was above 10*l*. [*Maule J.* He receives more, but you must deduct what he has to pay to the parish.] The words “clear yearly value” seem rather to refer to the amount which the landlord would receive. [*Maule J.* The question of value appears to be entirely one of fact, and therefore one exclusively for the determination of the revising barrister.] That may be so, when once he has ascertained the correct principle of calculation, but that is the point which is now in dispute.

*Grove*, for the respondent, referred to *Rex v. Chaplin* (b). He was then stopped by the Court.

TINDAL C. J. The question whether premises are of the clear yearly value of not less than 10*l*. within 2 *Will.* 4. c. 45. s. 27., is a question of fact, which it is not for us, but for the revising barrister, to decide. He has come to the decision that the house in question was not of the clear yearly value of 10*l*., and we are not in a situation to say that he is wrong in that conclusion.

(a) *Falc. & Fitz.* 453.(b) 1 *B. & Ad.* 926.

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MAULE J. The only rule that can be laid down is, that the revising barrister must collect all the circumstances of the particular case, and weigh them all well. In fact he must be an appraiser. This is no question of law, and I think, therefore, the decision of the revising barrister ought to be affirmed.

CRESSWELL J. concurred.

ERLE J. I also am of opinion that the value of premises is a question of fact, but I think the fair principle to be adopted in ascertaining the clear yearly value is, to inquire what the premises would let for to a tenant, and deduct therefrom what a tenant would ordinarily have to pay. This is the principle which is acted upon in settlement cases, and should, I think, be the guide of the revising barrister in a case like the present.

Decision affirmed.

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LUCKETT, Appellant, and KNOWLES, Respondent. *January 29.*

**T**HIS was an appeal from the decision of the revising barrister for the city of *London*, who had retained the name of the respondent upon the list of persons entitled to vote in the election of members for the said city, subject to an appeal to the Court of Common Pleas upon the following case:—

The name of the respondent appeared upon the said list as follows:

Nome.	Place of abode.	Nature of qualification.	Street &c. where situate.
Philip Lionel Knowles.	Greenwich.	Counting-house.	1, Bank Chambers.

An erroneous statement of the place of abode in the list of voters may be corrected by the revising barrister under stat 6 *Vict.* c. 18. s. 40.

Per *Maule J.*  
The place of abode of a voter is no part of his qualification.

The only point in the case was as to the power of the revising barrister to alter the place of abode of the respondent, as described in the said list.

It was proved that the respondent's place of abode was at *Queen's Square, Bloomsbury*, and not at *Greenwich*, as described in the said list, and that both *Greenwich* and *Queen Square* were within seven miles of the city of *London*. The respondent then required the revising barrister to alter the place of his abode as described in the said list, but it was contended on behalf of the appellant that the revising barrister had no power to do so, inasmuch as the place of abode was an essential part of the description of the qualification of the respondent, which the revising barrister was not

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at liberty to change under the fortieth section of the 6 *Vict. c. 18.*

The revising barrister decided that the place of abode was no part of the description of the qualification of the respondent, and that the erroneous statement of the said place of abode was a mistake in the said list, which under the said section the revising barrister had power to correct, and he altered the place of abode accordingly.

*Grove* for the appellant. It is submitted that the misdescription of the respondent's place of abode was a mistake which the revising barrister had no power to correct, under the provisions of stat. 6 *Vict. c. 18. s. 40.* The place of abode is required to be stated in the list because it is part of the voter's qualification, and a misdescription of his qualification cannot be amended; *Bartlett v. Gibbs (a)*; *Tudball v. The Town Clerk of Bristol (b)*. The description in the present case is not merely insufficient; it is altogether false. [*Maule J.* The fortieth section applies to a case where the description is wholly omitted; why then may not the revising barrister amend when there is a wrong description?] A total omission of the party's place of abode is not so likely to mislead an objector as a false description of it.

*Welsby*, for the respondent, was not called upon by the Court.

TINDAL C. J. The powers of amendment conferred by the stat. 6 *Vict. c. 18. s. 40.* are, as it appears to

(a) *Antè*, p. 73.

(b) *Antè*, p. 7.

me, sufficiently large to let in the amendment made by the revising barrister in the present case. That section, so far as the place of abode is concerned, provides for two cases; first, where it is wholly omitted, and secondly, where it is, in the judgment of the revising barrister, insufficiently described for the purpose of being identified. In both these cases the revising barrister is required to expunge the name of the party, unless the matter omitted or insufficiently described be supplied to his satisfaction before the revision is completed, in which case he is to insert such matter in the list. There can be no doubt, therefore, that if the place of abode had been wholly omitted in the present case it might have been supplied; but it is contended that the barrister had no power to correct the description in the list, because it was not an insufficient description, by which is meant a description that wants sufficient particularity, but a description which was altogether wrong. But it seems to me, looking at the terms in which the powers of amendment are given, that they may be taken to apply to every case where the place of abode is not sufficiently described for the purpose of identifying the party. I do not see why we are to restrain the terms of a clause which it was intended should be fairly and liberally construed, and I am, therefore, of opinion that the decision in the present case should be affirmed.

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MAULE J. I also am of opinion that the respondent's name was properly retained on the list. The barrister was bound to retain the name, unless power was given him to expunge it, and the ground on which he was asked to expunge the name was, that the place of

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abode was stated in the list to be *Greenwich*, when in point of fact it was *Queen Square*. Now, the voter, having been objected to, must have been required to prove, and must have proved, his qualification. But it is said that the place of abode is part of the qualification; to that proposition, however, I cannot agree. The place of abode is required to be stated, for the purpose of shewing that the voter resides within seven miles of the place of election. The misdescription, therefore, of the place of abode, is no objection to the qualification, which is correctly stated in the list. Then, does the case fall within that branch of the fortieth section, which requires that the revising barrister shall expunge the name from the list? The words in question are these; that "if any person whose name is included in any such list, or his place of abode, &c. shall in the judgment of the revising barrister be insufficiently described for the purpose of being identified, such barrister shall expunge the name of every such person from such list, unless the matter or matters so omitted or insufficiently described be supplied to the satisfaction of such barrister, before he shall have completed the revision of such list, in which case he shall then and there insert the same in such list." The objector here must insist that the voter comes within this part of the section, for if not, the revising barrister could have no power to expunge the name. Then, if the voter's place of abode was insufficiently described for the purpose of being identified, we find that the power of expunging is coupled with the power of amendment, for the section says that the barrister shall expunge the name, "unless the matter or matters so omitted or insufficiently described be supplied to the satisfaction of such bar-

rister, &c., in which case he shall then and there insert the same in such list." Here the matter has been supplied to the revising barrister's satisfaction, and therefore I think the power of amendment clearly applied.

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CRESSWELL J. I am entirely of the same opinion. The fortieth section begins by requiring the barrister to "correct any mistake which shall be proved to him to have been made in any list." This may give him a general power of correcting mistakes, or it may be intended to apply only to the particular descriptions of mistakes afterwards pointed out. It then goes on to mention certain instances, in which the barrister is required to expunge the name of the party. That is one mode of correcting a mistake. The section then goes on to provide another mode of correction, for it says, in effect, that, if the requisite particulars be supplied to the satisfaction of the barrister, he shall not expunge the party's name, but amend the description in the list by inserting such particulars. Either this case is within the latter part of the section, or it is not. If not within it, then the barrister could not expunge the name, and must leave the place of abode as he found it; if it is, he had the power to make the amendment. I think, therefore that, *quâcunque viâ*, the name of the respondent ought to have been retained on the list.

ERLE J. I also think that the revising barrister was right. The chief object of the fortieth section seems to be to prevent a *bonâ fide* qualification from being defeated by a mere defect of form. There is a very general power in the beginning of the section given to



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the revising barrister to correct *any* mistake, and without expressing a decided opinion that he had the power to make the amendment in question under that part of the section, I am inclined to think that he had. In a subsequent part of the clause, the revising barrister is empowered to amend in cases where the place of abode is either wholly omitted, or insufficiently described for the purpose of identification. I cannot see any reason why a mistaken description of a place of abode should not be considered an insufficient description. The section is a remedial one, and should be construed liberally.

Decision affirmed.

January 29.

LUCKETT, Appellant, and BRIGHT, Respondent.

Six persons, members of a political association, were the joint lessees of a house, and were alone liable for the rent thereof. Nothing was said in the lease of the purpose for which the premises were taken, but they were in fact used for the

THIS was an appeal from a decision of the same revising barrister as in the last case.

*W. E. Lockett* duly objected to the name of *John Bright* being retained on the list of persons entitled to vote for members for the city of *London*, in respect of the occupation of a house No. 67, *Fleet Street*, in the parish of *St. Dunstan in the West*. The respondent, together with *Richard Cobden*, *George Wilson*, *A. W. Paulton*, *R. R. Moore*, and *P. A. Taylor*, were joint

purposes of the association. The rent, and the servants who had charge of the premises were paid out of a common fund, to which the lessees, and many other members of the association subscribed, for the purpose of carrying out the objects of the association. Various members of the association transacted the business of the association upon the premises, and the lessees, when in *London*, resorted to them daily, and transacted there partly the business of the association, and partly their own. The revising barrister having decided that the lessees occupied the premises as tenants, and that the other members of the association did not jointly occupy as tenants with the lessees—*Held*, that as, upon the facts stated, the lessees had the right to occupy, and there was nothing to shew that they did not occupy, the Court could not do otherwise than affirm the decision.

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lessees of the said house, 67, *Fleet Street*, under a demise for the term of three years from the 29th of *September* 1843, in consideration of the payment of a premium of 150*l.*, and of a yearly rent of 200*l.* The said lessees were the only persons appearing as contracting parties with the lessor, or liable to him for the rent of the said premises, and there was no mention in the lease of any other parties, or of the purpose for which the said premises were taken. But it appeared in evidence that the whole of the said premises were used for the purpose of a certain voluntary association of persons styling themselves "*The National Anti-Corn-Law League*," and that more than twenty other parties, members of the said association, subscribed various sums of money to a common fund, for the purpose of carrying out the objects of the said association. The respondent and his said co-lessees were also subscribers to the said common fund. The rent of the said premises was paid out of the said fund, as were also the various servants of the said association, who had charge of the said premises. Various members of the said association transacted the business of the said association upon the said premises, and the respondent and his co-lessees, when in *London*, were daily upon the said premises, transacting there partly the business of the said association, and partly their own affairs. It was contended on the part of the appellant that the respondent and his co-lessees did not occupy the said house as tenants within the meaning of the twenty-seventh section of the 2 *W. 4. c. 45.*, or that if they did, the same was jointly occupied by them and the said other members of the said association as tenants, and then that the clear yearly value of the said premises

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divided amongst the members and the said occupiers would not give a sum of not less than 10% for each and every such occupier within the meaning of the twenty-ninth section of the said statute. The revising barrister decided that the respondent and his co-lessees did occupy the said premises as tenants, and that the same were not jointly occupied by them and the other members of the said association as tenants, and retained the name of *John Bright* on the list, as well as those of his five co-lessees, whose cases were consolidated with the above.

*Grove* for the appellant. It is not denied that the respondent and his co-lessees were tenants of the premises; but it is submitted that they did not occupy as tenants within the meaning of the twenty-ninth section of the Reform Act. There is no case in which it has been held that a party occupied, where he did not himself reside, or acquire a possessory right by the residence of his family. In *Rex v. Ditchet* (a), which turned upon the meaning of the word "occupy" in the stat. 6 G. 4. c. 57., *Littledale J.* says, "There is a material difference between a holding and an occupation. A person may hold though he does not occupy; a tenant of a freehold is a person who holds of another: he does not necessarily occupy. In order to occupy, a party must be personally resident by himself or his family." (b) In *Rex v. St. Nicholas, Rochester* (c), the learned Judge explained those observations thus: "What I am reported to have said in *Rex v. Ditchet*, as to the meaning of the word 'occupation,' applies to

(a) 9 B. &amp; C. 176.

(b) *Id.* 183.

(c) 5 B. &amp; Ad. 227.

a constructive occupation only, which was sufficient to satisfy the statute that governed that case." Admitting that a constructive occupation would satisfy the twenty-seventh and twenty-ninth sections of the Reform Act, in the present case there is nothing like a possessory right, constructively or otherwise. All the previous cases have proceeded upon something like an exclusive occupation, and the lessees here have no control over the premises. The servants are paid out of the funds of the association, and, therefore, they are not the servants of the lessees, but of the whole association. [*Tindal* C. J. The case does not find that the other members of the association transacted business at the house without the leave of the lessees.] The rent is paid by the League, as well as the servants, and the lessees have only a partial user of the house, which is occupied by the whole association. [*Tindal* C. J. The lessees use it for *their own purposes*.] At all events, it is submitted that if the lessees occupy at all, their occupation is joint.

*Welsby*, for the respondent, was not called upon by the Court.

TINDAL C. J. The question is, whether the Court can say that the revising barrister was wrong in the decision which he gave, and I am of opinion, upon the facts found in the case, that he was not. In the first place, it is found that the lease of the house in question was made to the respondent and his co-lessees. Then, they being tenants of the house, there are facts quite sufficient to shew their occupation in that character. It clearly appears that when in *London* they go

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to the house as often as they please, and that they transact there not only the business of the association, but also their own business.

MAULE J. The revising barrister has decided that the six persons named in the case occupied the premises in question as tenants, and now asks us whether he was wrong in coming to that conclusion. Now, he appears to have arrived at it in this way: the respondent and his co-lessees were the persons to whom the lease was made, and they used the house, when in *London*, for such purposes as they thought fit. From the letting and the using the barrister has inferred an occupation as tenants, and I think it was by no means an unreasonable conclusion.

CRESSWELL J. I think the revising barrister acted rightly in retaining the names in the list of voters. The question is, whether he had materials to justify him in holding that the parties occupied as tenants. It is expressly found that they were the lessees of the house. Then, do they occupy the premises? There is nothing to shew that they have parted with the right which they possess as lessees of turning away every one of the servants in the house, nor does it appear that the other members of the association came into the house against the will of the lessees. It is true that there is a common fund out of which the servants are paid, and to which several other persons besides the lessees contribute; but there is nothing in the case to indicate that the servants can remain a moment longer than the lessees think proper. It appears further, that the lessees resorted to the house as often as

they pleased, to transact there their own business, or that of the association of which they were members. I think, therefore, that the decision was right.

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ERLE J. I am of the same opinion. I am not aware of any definition of the word "occupation," which would not include an occupation like the present.

Decision affirmed.

## HILARY VACATION.

KNOWLES, Appellant, and BROOKING, Respondent. February 23.

UPON a consolidated appeal from the decision of *James Lancaster Lucena*, Esq., the revising barrister for the borough of *Dartmouth*, the following facts were stated by him for the opinion of the Court:

*John Brooking*, on the list of persons entitled to vote in respect of property occupied within the parish of *St. Saviour's*, in the said borough, objected to the name of *John Knowles* being retained on the said list. The notice of objection sent to the said *John Knowles* by the said *John Brooking* was as follows:—

"To Mr. *John Knowles*.

"I hereby give you notice, that I object to your name being retained on the list of persons entitled to vote in the election of a member for the borough of *Clifton-Dartmouth-Hardness*.

"Dated this 22d day of *August*, 1845.

(Signed) "John Brooking,

"Of *Higher-street, Dartmouth*, on the list of voters for the parish of *St. Saviour's*."

A notice of objection was signed by the objector, with the addition of the true place of his abode, as it was at the time of serving the notice, this place of abode being different from that which appeared against his name upon the list of voters—*Held*, per *Tindal C. J.*, *Coltman J.* and *Erle J.*, that the form of the notice was a sufficient compliance with *stat. 6 Vict. c. 18. s. 17. schedule (B), Nos. 10, 11. ; Maule J. dissentiente.*

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A notice, similarly signed, was sent by the said *J. Brooking* to the overseers of *St. Saviour's*. The place of abode of the said *John Brooking* was stated in the said list to be *New Road*. The said *John Brooking* had offices in *New Road*, and a servant lived in the house to look after them; but the said *John Brooking* did not live there either at the time of the publication of the list by the overseers, or at the time of the service of the notice. The said *John Brooking's* place of abode was truly described in the notices of objection, and his place of abode was stated in the list of voters for the parish of *St. Petroch*, another of the parishes comprised within the said borough, to be in *Higher-street*. It was urged, on behalf of the said *John Knowles*, that *John Brooking's* place of abode in the notice of objection ought to have been the same as that stated in the list of *St. Saviour's*, to which list he referred in the notice. On behalf of the said *John Brooking*, it was contended, that, by giving his true place of abode, he had followed the forms Nos. 10 and 11, (Schedule B), referred to in the seventeenth section of the Registration Act, 6 *Vict.* c. 18., and that the notices were, therefore, sufficient.

The revising barrister decided that they were sufficient; and, the qualification of the said *John Knowles* not being proved, he erased the name of the said *John Knowles* from the said list. The question for the opinion of the Court was, whether the said *John Brooking's* statement of the true place of his abode in the said notices was, under the circumstances hereinbefore stated, sufficient in law to sustain the said notices against the said *John Knowles*. If the Court were of that opinion, the register was to stand without amendment. If the Court were of a contrary opinion, then

the register was to be amended by inserting the names of *John Knowles* and the other persons.

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The case was argued (in *Michaelmas* term, November 20th) by *Kinglake* Serjt. for the appellant, citing *Gadsby v. Warburton* (a).

*Manning* Serjt. for the respondent.

The arguments on either side are fully stated in the elaborate judgments delivered.

*Cur. adv. vult.*

There being a difference of opinion, their lordships now delivered their judgments *seriatim*.

TINDAL C. J. The question reserved for our determination by the revising barrister in this case is, whether the notices of objection against the name of a person being retained on the list of voters for the borough, which notices were signed by him as objector, with the addition of his true place of abode, being another and a different place from that inserted against his name on the list of voters, are sufficient. The revising barrister held the notices to be sufficient; and although the question may be subject to considerable doubt, and one of my learned brothers, for whose judgment I entertain the greatest respect, thinks differently, the opinion at which I have been compelled to arrive is, that the revising barrister's decision was right. The forms of the two notices upon which the precise question turns, are those numbered 10 and 11 in the schedule (B) in the Registration Act (6 *Vict. c. 18.*),

(a) *Antè*, p. 136.



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and it is upon the construction of those forms that the question must mainly turn. But it may receive some light from the consideration of the forms numbered 4 and 5 in schedule (A) of the same act, and also from the same forms (since repealed) given in schedules (H and I) of the statute 2 *W. 4. c. 45*. The forms in question, numbered 10 and 11 in schedule (B), each concludes thus: "Signed *A. B.* [*place of abode*] on the list of voters for the parish of ———." And the appellant contends that these latter words, "on the list of voters for the parish of ———," operate as a direction or requisition to the objector that he must fill up his place of abode by inserting the place of abode which is against his name in the list of voters. The respondent, on the other hand, contends that the words mean no more than a simple allegation that the objector's name is on the list of voters, as it was required to be by the seventeenth section of the statute 6 *Vict. c. 18.*; for it is to be observed that the seventeenth section requires only that the name of the objector shall have been inserted in the list of voters for the borough, and that he shall give the notice of objection to the overseers "according to the form numbered 10 in the schedule (B), or to the like effect;" and that he shall also cause to be given, or left at the place of abode of the person objected to, as stated in the said list, "a notice according to the form numbered 11 in the said schedule;" so that the question substantially turns upon the construction of the forms so referred to, and given in the schedule.

And it appears to me that, looking at the concluding words of those two forms, they do not in any manner qualify the sense of what had preceded, namely, "place

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of abode," nor in any manner refer to the place of abode contained in the list of voters; but that the whole sentence is satisfied, if the true place of abode of the objector at the time of giving the notice is inserted therein. The words between the parentheses are only "place of abode;" words which, taken absolutely and by themselves, and in their natural sense, would denote the then place of abode of the party objecting; for the words between the parentheses are not "place of abode on the list of voters," which would necessarily require the construction contended for by the appellant; nor are the words "as on the list of voters," which latter form would have also necessarily required the same construction; but the words within the parentheses are simply "place of abode," and the words that follow contain a separate and distinct proposition that such *name*, not such *place of abode*, is to be found on the list of voters. And it appears to me to confirm this construction of the form in the schedule, that, in the seventeenth section, which gives these two forms of notice, the notice which is to be given to the parties is directed to be left at the place of abode of the person objected to, as stated in the list; whereas the form itself, when referring to the place of abode of the objector, says no more than "place of abode;" and as the form itself may be considered as if it were actually inserted in the body of the seventeenth section, this distinction in the language of the legislature, with respect to the place of abode of the person objecting, and that of the person objected to, still further sanctions the difference of interpretation to be put upon the two. And further, upon referring to the forms of the corresponding no-

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tices, as given by Schedule (A) of the same act, in the case of objections to the names of voters being retained upon the register for the county, this view of the subject appears to be confirmed; for Schedule (A), No. 4, which is the form of notice to be given to the overseers, contains two columns, the first headed, "Christian and surname of the voter objected to, as described in the list or register;" the second column, "Place of abode as described." But the signature of the objector himself is only required to be "*A. B. [place of abode]*," simply, and nothing more. In that form, therefore, the place of abode of the objector must, in its natural sense, be construed the place of abode in which he then is, and no other; more particularly when contrasted with the requisition as to the place of abode of the party objected to, which is required to be stated as described in the register. The form which immediately follows, Schedule (A), No. 5, which is to be given to the party objected to, leads to the same conclusion. The name and place of abode of the party objected to are required to be inserted "as described in the list;" the name of the objector is to be signed "*A. B., of — [place of abode]*," on the register of voters for the parish of —." It is this form of notice (No. 5) to which the words are for the first time subjoined, "on the list of voters for the parish of —." In all the preceding forms of notice of objection, both that given to the overseers (No. 4), and also in the forms of notice given under the former statute, 2 *W. 4. c. 45.*, the signature is directed to be, "*A. B., of — [place of abode]*," and nothing more. And if the notice of objection under the statute of *W. 4.*, whilst those forms remained in force, and the notice of objection to be given to the

overseers under Schedule (A), No. 4, in the Registration Act, are all satisfied by adding the place of abode of the objector at the time named (no more than the simple place of abode being required by any words in those cases), there is surely nothing in the reason of the thing which would call for the insertion of the very same place of abode of the objector as that in the list of voters, in the other remaining forms given by the statute; and certainly I cannot see such an insertion is made necessary by the enacting words of the statute, or by the form given in the Schedule (A). The words "on the list of voters" appears to me to be no more than a direct allegation of the existence of the fact which has been made essential by the seventeenth section, namely, that the objector's name is on the register for the county, or the list of voters for the borough (as the case may be), a fact, the truth of which may be determined by the overseers, by a reference to the register or list, of which a copy is in their custody; or by the party objected to, by his inspecting such register or list, which he is empowered by law to do. And although it is objected that if a new description is given for the first time of the objector's place of abode, it must give rise to difficulty or confusion, it seems a sufficient answer, that no real difficulty can follow unless there happens to be more than one voter upon the same register or list having the same Christian name and surname; for if there is but one, then it must be the man who is objected to, and no other, however the place of abode is described; and even if there be more than one, all the difficulty will be removed when the proper time arrives, namely, when the case comes before the revising barrister, at which time the identity

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of the objector must be made out ; and, in the meantime, the giving the true place of abode of the objector must afford a better opportunity of inquiry and communication than the adding of the old place of abode, which it must be assumed, from some cause or other, is incorrect at the time of giving the notice. Upon the ground, therefore, that the construction above given of the form of notice appears to me the most natural and simple, and that it is confirmed by the heading of the forms above adverted to, I have arrived at the conclusion that the decision of the revising barrister is right. I forbear to enter upon an examination of the relative convenience or inconvenience of either decision, not only because they appear to me to be nearly, if not quite, balanced, but because I think that, unless there is some preponderance in that respect, our determination ought to rest on the words, of the statute itself.

COLTMAN J. In this case the question has been fully stated by my Lord Chief Justice, and I concur with him in the opinion he has expressed on the subject, and in the reasons which he has assigned for it. I am not able to see any considerable advantage which the one construction contended for has over the other, and therefore I think the most plain and natural meaning is that which ought to be adopted ; and it seems to me that the words “place of abode,” at the bottom of the form No. 10 of Schedule (B), 6 *Vict. c. 18.*, do, in their natural sense, mean his true place of abode, and must be so understood, unless there are some words of qualification added to them. The following words “on the list of voters for the parish of ———,” do describe a quality of the objector himself, but not, as it seems to

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me, a quality of the place in which he lives. *John Brooking*, the objector, is truly said to be on the list of voters for the parish of *St. Saviour*; but it cannot be said, with any propriety of language, that *Higher Street, Dartmouth*, is on the list of voters for the parish of *St. Saviour*. If the intention of the act had been to require the objector to state, not his true place of abode, but the place of abode described in the list, it would have said so in plain terms, and the form would have been *A. B.* "on the list of voters for the parish of —," with the parenthesis "*(place of abode as described on the list)*," or to that effect. And I am the rather led to this conclusion I have come to from the use of terms to that effect in the forms in Schedule (A), Nos. 4 and 5, the words used in No. 4 being, "place of abode as described," and the words in No. 5 being, "place of abode as described in the list." The reasons for the construction I have put on the forms in question have been already stated with so much distinctness by my lord, that I do not think it necessary to add any thing further, except to say that I fully concur in those reasons.

ERLE J. I concur in the judgment and the reasons assigned by the Lord Chief Justice. The appellant's contention that the words "on the list of voters" &c. apply to the place of abode, and that the form in question is to be understood to mean "*A. B.*, described on the list of voters &c. to be of the place of abode," appears to me to be open to several objections. First, that the words must be altered before they express this meaning, whereas they are capable of a sensible application without any alteration. Secondly, when so altered, they contain an immaterial statement, whereas,

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if applied to the person, they are material to shew his qualification. Thirdly, it gives different meanings to the same words in two acts *in pari materiâ*; and fourthly, if the described place of abode had been intended, these words would have been used, for they are used on several occasions in both statutes, where the writer of a notice is referred to the list for the place of abode of another person whom he may not know otherwise than from the list; but the words in question in other instances denote the true place of abode of the writer, which he is presumed by the legislature to be able to give without difficulty. I cannot discover any good effect from requiring the place of abode as described in the list, instead of the true place. If communication is contemplated, the true place is best. If the name occurs only once, the identity is clear, without referring to place. If the name occurs twice, the objector is identified at the revision, which is as early as can be useful, if no communication is intended. If pretended objectors are to be guarded against, there would be no security from requiring the place to be transcribed.

MAULE J. (a) This is an appeal from the decision of the revising barrister for the borough of *Dartmouth*, who held that the notices of objection which had been given to the overseers, and to the person objected to, were sufficient. These notices concluded with the words, “ (Signed) *John Brooking*, of *Higher Street, Dartmouth*, on the list of voters for the parish of *St. Saviour’s*,” the place of abode of the objector, as mentioned in the list

(a) This judgment was read by *Erle J.*, in the absence of the learned Judge by whom it was prepared. ;

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of voters referred to, being *New Road*, and not *Higher Street*; and the fact being, that, although he had offices in *New Road*, his place of abode was *Higher Street*. The notices were objected to, on the ground that they omitted the place of abode as mentioned in the list referred to. The act 6 *Vict. c. 18.* requires, in sect. 13., the overseers of every parish in a borough to make out lists of persons entitled to vote, according to forms numbered 3 and 4 in Schedule (B), and that the Christian name and surname of each person on the lists shall be written at full length, together with the place of his abode, and the nature of his qualification. The forms numbered 3 and 4 have columns for the Christian and surname at full length, and for the place of abode. Section 17 gives to any person whose name shall have been inserted in any list of voters for a borough a power to object to any other person as not having been entitled to have his name inserted in any list, and provides, that he shall give notices of objection according to the forms numbered 10 and 11 in Schedule (B). The forms Nos. 10 and 11 conclude thus: "Dated this —— day of ——, ——. (Signed) *A. B.*, of —— [*place of abode*], on the list of voters for the parish of ——." And the question is, whether this provision as to the notices has been complied with; in other words, whether a notice is sufficient, which wholly omits all mention of the place of abode of the objector as it appears in the list of voters. For the appellant it was insisted, that this section of the act required that, at all events, the place of abode of the objector, as it appeared on the list of voters to which the notice refers, must appear on the notice, whether, in case of mistake in the list of voters, or change of abode since it was made out, it



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might or might not be necessary to add a mention of the place of abode at the date of the objection. For the respondent it was contended, that the place of abode required to be mentioned was that at the date of the objection, and that the act did not require any mention of the objector's abode as it appeared on the list of voters. As the question to be decided depends upon the construction of the seventeenth section of stat. 6 *Vict.* c. 18., and of a notice drawn in the form therein prescribed, it may be convenient to consider the general nature and purpose of the act in which the section in question occurs. The act of 2 *W.* 4. c. 45., "To amend the Representation of the People in *England* and *Wales*," contained, as incidental to the important changes which it made, certain provisions for the registering of persons entitled to vote for members of parliament. These provisions having been found insufficient, the act of 6 *Vict.* c. 18. was passed, of which the principal object was to make a new set of regulations for forming registers of voters. This act accordingly made many additions to, and alterations in, the provisions relating to registration of the act of *William*; among which are to be noticed, first, that the act of *William* gives, in sect. 39, the power of objecting to a name being retained on a list of voters in counties, not only to persons on the register, but to those who have claimed to be inserted in a list of voters, whether they have actually been inserted or not; while the act of *Victoria*, by sect. 7, confines such power of objecting to persons whose names are on the register; secondly, that, in the forms given for lists of voters, of claimants, and of persons objected to in cities and boroughs, in the act of *William*, no mention of the place of abode is required, except in the case of freemen,

and of rights of voting not depending upon property ; while in the case of county voters, the place of abode was always to be inserted ; so that, in a borough register formed under that act, many voters would be described by their Christian and surnames only, without any addition of place of abode. This is altered by the act of *Victoria*, which requires, that, in all cases, without exception, both in counties and boroughs, the place of abode, as well as the name, shall appear on the list. A third alteration is in the form of notices of objection, which, under the act of *William*, did not contain any statement that the objector was on the register, or was a claimant in a county, or was on a list of voters in a borough ; and did not, in any other manner, shew that he was one of the class of persons to whom the right of objecting belonged. The act of *Victoria*, in all cases, with one exception (to be hereafter noticed), requires the objector to describe himself as on the register or list of voters, and to refer particularly to the parish on the register or list. The object of these alterations probably was, to identify the persons mentioned in the list more completely, so as to enable those whom it concerned to know, easily and certainly, who the persons named were, and to enable the party objected to, by referring to the list or portion of the register mentioned in the notice, to ascertain whether the objector had shewn himself to have a right to object ; and, in case of its not appearing that the objector had such right, to enable him safely to disregard an objection, which the revising barrister would be bound to treat as not sufficient to call upon him to prove his qualification. The alterations are not only well adapted to effect these purposes, but are also in conformity with the law, which,

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in many cases, has made it necessary, and with general convenience, which in most cases has made it usual, to identify a person by means of his Christian and surname, and of his place of abode; and they are also in conformity with the rule which, in case of a special authority or power to be exercised in writing, requires that the writing should shew that the person assuming to exercise it is one of those to whom it belongs. The form of notice, before referred to, as an exception to the general rule, that, under the act of *Victoria*, all forms of notices of objection require the objector to describe himself as on the register or list, confirms the view, that the intention of these forms is, to enable the party objected to to refer with ease to the list or register, to ascertain whether the objector is to be found upon it. That exception is the form No 4 in Schedule (A) of the act of *Victoria*, which form is not for a notice to the party objected to, but to the overseers in a county. This form concludes with the words “*A. B. [place of abode]*,” without any statement of the objectors being on the register. Now, it is to be observed, that the overseers have, as such, no concern with the question, whether the objector is on the register, or not. By sect. 8 of the act of *Victoria*, they are required to publish a list of all persons against whom notice of objection has been given to them; and, by sect. 34, to bring the original notices to the revising barrister, who, and not the overseers, is to judge of their sufficiency. The overseers have no interest or duty resting on them to ascertain whether the objector is on the register; a reference to it could not assist, and might embarrass them, as it might be considered as calling on them to refer to the register for the whole county. And this

view is in conformity with sect. 3 of the act, which requires the clerk of the peace to send to the overseer a copy of such part only of the register as relates to his parish; thus treating him as a person who can have no concern with the parts of the register relating to other parishes.

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It was not denied, on the part of the respondent, that the notices in question ought to contain an assertion of the right to object; but it was contended, that that right was sufficiently stated in the words "on the list of voters for the parish of ———;" and that the preceding words "*A. B. of ——— [place of abode]*," were not intended as a statement of the name and addition of the objector as inserted in the list, but of his name and addition at the time of signing the notice. It is material, on this part of the discussion, to observe, that the immediate subject of inquiry is, what is the meaning of a notice filled up according to the form; for it is such notice, and not the form itself, that is sent to the party objected to. The want of adverting to this has, I think, produced some confusion. The form of notice has the words "place of abode" in italics, within a parenthesis, between the words "*A. B. of*" and the words "on the list of voters;" but this parenthesis is not to be retained in the notice when drawn, but is only meant to shew that the words within them are not to be the very words in the notice, but are only a direction as to what those words shall be. This is manifest from the word "of" in the form not being within the parenthesis; so that a notice drawn according to the form, would, to take an example, for the sake of clearness, run thus: "*John Smith, of Broad Street, on the list of voters for the parish of St. Mary,*" without any parenthesis. And

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the question is, how a notice, in these words, should be understood. It is a mistake to treat it as if the parenthesis were retained.

It is to be observed, that the right to object does not, since the act of *Victoria*, depend on the right to vote, or the right to be on a list; for a person may have a right to vote, or to be on a list, and yet have no right to object, if, in fact, his name is not inserted in a list; or he may have no right to vote, or to be on a list, and yet may have a right to object, in respect of being, in fact, on a list. The right to object, therefore, being entirely dependent on some one entry in a list of voters, whether the name and place of abode be correctly stated in such entry or not, it seems to me that this construction of the forms is more conformable to the general rules of law, and to the intention of the act of *Victoria*, which requires the notices to point out, distinctly, which of all the entries in the list is that which is relied on as the foundation of the right to object; thus, not merely claiming the right, or making a general assertion, from which it might be inferred, but (in conformity with the rule which prevails with respect to the exercise of powers or authorities by writing), shewing, in particular, the fact on which the right depends, and enabling the voter to ascertain, by a simple inspection of the list referred to, whether the right to object, which is relied on, does really exist. A minute consideration of the terms of a notice, drawn according to the form, confirms this construction; the natural and obvious meaning of the words "on the list of voters for the parish of *St. Mary*," following the words "*John Smith*, of *Broad Street*" (to use the same example as before) is, that "*John Smith*" and "*Broad Street*" are mentioned in the list as the

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name and place of abode of a voter, and not that the objector is a person whose present name and place of abode are "*John Smith of Broad Street*," but whose name and place of abode on the list may be the same or different. It can hardly be denied, that in the absence of a parenthesis, the words "on the register of voters for the parish of *St. Mary*," are left to operate, in like manner, on the whole clause which precedes them — "*John Smith, of Broad Street*," or they operate on no part of it; for it seems very difficult to contend that they operate differently on the words "*John Smith*," and on the intervening words of "*Broad Street*," so as to mean that the name of the voter on the list was "*John Smith*," but not to mean that the place of abode on the list was "*Broad Street*;" and, accordingly, it was argued for the respondent, that the words "on the list" &c. did not import that either the name "*John Smith*" or the place of abode "*Broad Street*," was mentioned in the list; and that is, certainly, a more reasonable construction than that which treats the words "on the list" &c. as operating on the words "*John Smith*," and as having no operation on the intervening words "*of Broad Street*;" which construction seems to rest on a tacit but erroneous application of the parenthesis, which is found in the form, to the words of the actual notice, in which it is not found. That the notice is to be understood, not merely as affirming that the objector is on the list of voters, and therefore has a right to object, but as referring to a particular entry, is further confirmed by the forms requiring the notices to specify the particular list on which the objector is to be found. If it were intended as a mere assertion of a right to object, it would be sufficient to state, that the objector was on a list of voters for

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the borough ; and, in the corresponding case in counties, that the objector was on the register, without saying, as is required by Schedule (A) No. 5, for what parish. As the particular list is referred to, it is natural that the particular entry itself should also be referred to, each reference being in furtherance of the same object.

It was contended for the respondent that, by the construction contended for by the appellant, a voter who might wish to communicate with the objector, might be prevented doing so, in the case of an objector whose present place of abode was different from that on the list referred to, whether this difference arose from error or from change. But it is doubtful whether the act contemplated any such communication : it does not authorize or require it ; it imposes no duty to make, nor confers any right on the maker of, any such communication. But if it did contemplate such communication, such communications must probably be very rare. The cases of error and change are a very small portion of the whole number of cases ; and such errors or changes as would prevent the objector being reached by a letter directed to him, at his abode, as mentioned in the list, must be a very small portion of the whole number of cases of error and change ; and it may be observed that, in the case now in judgment, no such inconvenience did arise. The legislature, in the much more important case of the service of a notice of objection—the giving of which is essential to the objector's right, and the receipt of it, to the voter's defence — has considered that it is sufficient to send the notice to the abode mentioned in the list. Indeed, the general scope of the act of *Victoria* seems to be, that, for all purposes connected with registration, the description on the list,

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both by name and place of abode, shall be taken to be the true description; and the effect of this provision would probably be, that every voter who took an interest in elections would take care that notices &c. directed to him at his abode on the list should be forwarded to him. But even supposing that it were the object of the act to enable the party objected to to communicate with the objector, the distinct statement of the right on which the objector relied is a much more important and principal one. If the first-mentioned of these purposes be one which the notice was intended to effect, it may be that, in cases of error and change of abode, the notice should specify the accurate or present description of the voter and his abode, as well as that on the list of voters; but it does not follow that he may omit all mention of his abode as stated in the list.

An argument was drawn from the form No. 5, in Schedule A, where, in the beginning of the notice, the form was: "To Mr. — of — [*here insert the name and place of abode of the person objected to as described in the list*]" : and at the end the form is — "Signed A. B. of [place of abode] on the register of voters for the parish of —" : in the same words as in the forms in question, only putting "register" for "list of voters." Here, it is said, the insertion of the words, "as described in the list," in the first part of the notice, and the omission of the words "on the register," in connection with the words "place of abode" within the parenthesis, in the last part, shews that the place of abode in the last part is not to be that on the register. But the insertion and omission of these words may be otherwise accounted for. In the first part the place of abode is mentioned in the address of the notice, "To Mr. —"



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of ——”; and there are no such words as “on the register of voters for the parish of ——,” which occur in the last part of the notice, and which, as I have before shewn, refer to the place of abode as that mentioned in the register. In this last part it would be superfluous to put within the parenthesis, “as described on the register,” because “on the register of voters for the parish of ——” expresses the same thing.

With regard to the comparative convenience in practice of the two constructions, there seems no doubt that that of the appellant is to be preferred. It enables the party objected to, and the revising barrister, easily to ascertain by inspection of the notice and list, without any extrinsic evidence, whether the notice is sufficient, inasmuch as, on this construction, where the place of abode in the notice is the same as on the register, no question of law or fact can be made as to its validity; whereas, if the respondent's construction is to prevail, many questions of law may probably arise as to what is a sufficient description in the notice of the place of abode, whether the county, parish, or post town is to be mentioned; and these will be the more numerous and doubtful, from the uncertainty of what the object was for which the insertion of the present place of abode was required by the act; and in all cases it must be a matter of evidence, and may be one of controversy, before the revising barrister, whether the place of abode be in fact truly stated in the notice. It was also suggested that the identification of the voter by his place of abode on the list would be unnecessary in a notice of objection, except in the case of two voters of the same name being on the list: but this is no answer to the argument arising from the convenience of the rule re-

quiring identification by Christian name, surname, and place of abode; all three may be necessary in some cases, and they are required in all, for the sake of uniformity, simplicity, and convenience.

I think, for these reasons, that a due consideration of the principles of law which are applicable to the case, of the general intent of the Registration Act, and of the true meaning of those particular provisions which relate to notices, leads to the conclusion that the appellant's construction of the notices is the true one, and that it avoids great practical inconvenience which would arise from adopting that of the respondents; and, consequently, that the decision of the revising barrister ought to be reversed.

Decision affirmed (a).

(a) *WILLS*, Appellant, and *ADEY*, Respondent.

[*Easter Term.*]  
*April 22.*

THIS was a consolidated appeal from the decision of *Frederick William Slade, Esq.*, the revising barrister for the borough of *New Sarum*.

The case stated that the parliamentary borough of *New Sarum* comprised the following parishes or places, viz. The Liberty of the *Close*, the several parishes of *St. Thomas*, *St. Edmund* and *St. Martin*, part of the parish of *Fisherton Anger*, and part of the parish of *Milford*. The respondent, *Charles Adey*, had served the appellant with a notice of objection, in which he described himself as "of the parish of *Fisherton Anger*, in the said borough, on the list of voters for the parish of *Fisherton Anger*."

The respondent's name appeared on the list of persons entitled to vote in the election of members for the borough in respect of property occupied within the parish of *Fisherton Anger*, (as follows):

Christian Name and Surname of each Voter.	Place of Abode.	Nature of Qualification.	Street, Lane, or other like Place in this Parish where the Property is situate.
Charles Adey.	Fisherton Street.	House and Garden.	Fisherton Street.

parish of *F. A.*" No other person of the same name was on the list for that parish.—*Held*, that the notice was sufficient.

*New Sarum* comprises part of the parish of *Fisherton Anger*, in which parish is *Fisherton Street*. A party whose name was on the list of voters for that parish, his place of abode being there described as *Fisherton Street*, served a notice of objection in which he described himself as "of the parish of *F. A.* in the said borough, on the list of voters for the said

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It appeared that the parish of *Fisherton Anger* contained a street called *Fisherton Street*, and that there was no other person of the name of *Charles Adey* upon the list of voters for that parish. It was objected on behalf of the appellant that the description of the respondent's place of abode in the notice of objection was insufficient; and it was contended that he should have described his place of abode to be "*Fisherton Street*," as described in the list of voters, and not of "the parish of *Fisherton Anger*" alone. The revising barrister, however, held the notice to be sufficient, and the name of the appellant was erased from the list, upon his not appearing to support his qualification.

The case was argued in *Hilary* term (*January 21*) by

*Kinglake* Serjt. (*H. T. Atkinson* with him), for the appellant, referring to *Gadsby v. Warburton* (*a*), and contending that the description in the notice of objection should be the same as that in the list of voters, it being the only mode of identifying the objector.

*Arnold*, contra, submitted that the notice could not mislead the party objected to, as the objector's place of abode was really, as described in the notice of objection, in the parish of *Fisherton Anger*, and it was found in the case that there was no other person of the objector's name upon the list for that parish. He cited *Tudball v. The Town Clerk of Bristol* (*b*).

*Kinglake* Serjt. replied.

*Cur. adv. vult.*

TINDAL C. J. now intimated that this case must be considered as decided by *Knowles v. Brooking*.

Decision affirmed.

(*a*) *Antè*, p. 136.

(*b*) *Antè*, p. 7.

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C OLVILL, Appellant, and WOOD, Respondent.

February 23.

**A**T a Court held before *T. J. Phillips, Esq.*, the revising barrister for the borough of *Chatham*, a consolidated appeal was reserved for the opinion of the Court of Common Pleas upon the following facts : —

*George Huben* and *William Jolley* were objected to, as not being entitled to have their names retained on the list of voters for the borough of *Chatham*. It appeared that each of them claimed to be so entitled in respect of a house in the parish of *Chatham*, and that they had respectively occupied such houses during the required period at the yearly rent of 10*l.*, exclusive of rates and taxes, and that there was no special agreement between them and their respective landlords as to repairs or insurance. It further appeared that the said rent of 10*l.* was in each case the fair rent of the premises. In support of the objections, it was contended that the proper measure of a clear annual value of a house, within the meaning of the stat. 2 *W.* 4. c. 45. s. 27., was not the rent for which such house would let to a tenant, but the amount of such rent after deducting therefrom the average annual expense of landlord's repairs and insurance, and consequently that the houses in question were not of the clear annual value of 10*l.* The revising barrister, however, was of opinion that the fair annual rent was the proper criterion of value without any such deduction, and the right of the parties to be retained on the list being established in all other respects, they were retained accordingly.

The fair annual rent of premises is the proper criterion of their "clear yearly value," within stat. 2 *Will.* 4. c. 45. s. 27.; without making any deductions for landlord's repairs or insurance.

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*Kinglake* Serjt. for the appellant (in *Hilary* term, *January* 15.) The “clear yearly value” of premises, if a proper construction be put upon those words in the twenty-seventh section of the Reform Act, does not mean the amount of rent for which they are let by the landlord. The rent is merely evidence, not the criterion, of value. The “value” intended by the act is the value of the premises to the landlord, not to the tenant, whose title to vote rests upon the *occupation* of premises which are, to the landlord, “of the *clear* yearly value of not less than 10%.” The word “clear” shews that some deductions for disbursements were in the contemplation of the legislature, such as the charges necessary to keep the premises in repair, which must come out of the pocket of the landlord. It is impossible to estimate the clear yearly value of premises to a tenant. The value, therefore, must be considered with reference to the owner of the premises. This construction of the act is borne out by the language used in former statutes. The stat. 8 *Hen.* 6. c. 7. confers the franchise upon such persons as “shall have free land or tenement to the value of 40s. by the year, at least, above all charges.” Again, the stat. 18 *G.* 2. c. 18. s. 5. enacts that no person shall vote for a county “without having a freehold estate, in the county for which he votes, of the clear yearly value of 40s., over and above all rents and charges payable out of, or in respect of the same.” If, therefore, the freeholder has a mortgage on his estate, which reduces the annual value below 40s., he is not entitled to a vote. [*Cresswell* J. You will hardly contend that if the owner of a house in a borough were to grant a rent-charge out of it, which would make the annual value *to him* less than 10%, the tenant would be

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thereby disqualified from voting. If so, there is no analogy between the present case, and the provisions of the stat. 8 H. 6. and stat. 18 G. 2.] It is obvious that "clear annual value" must mean something different from "annual value," and it is submitted that the words imply the net amount of rent received after deductions for repairs and insurance. [*Tindal* C. J. Why should any thing be deducted for insurance? Many landlords are their own insurers.] The question will then turn upon the repairs, without which, the premises would, in process of time, become of no value at all. There is a close analogy between the cases which have been decided upon the stat. 13 & 14 Car. 2. c. 12. s. 1. and the present. The authorities are collected in *Burn's Justice*, tit. "Poor" (a), and shew that the yearly value must not be estimated by the rent of the premises, which may be worth more or less than the amount of rent paid. *Rex v. Southwold* (b), *South Sydenham v. Lamerton* (c). In *Rex v. Tomlinson* (d), *Bayley* J., delivering judgment, says, "In the case of houses, the annual profit or value is always a part only of the annual rent paid to the landlord. Some portion of that rent ought to be set apart to form a fund for repairing or building, when necessary; in other words, to maintain or reproduce the subject of occupation." And in *Rex v. Lord Granville* (e) *Parke* J. observed, "The annual value is part only of the annual rent; some portion of that rent should be considered applicable to repairing and replacing the injuries." Suppose there were two houses of the same kind let, the one for 8*l.* and the other for 10*l.*, the dif-

(a) P. 801.; 29th ed.

(b) *Burr. S. C.* 140.; 2 *Stra.* 1127.(c) 1 *Stra.* 57.; 2 *Bolt's P. L.* 128.(d) 9 *B. & C.* 166.(e) 9 *B. & C.* 188.

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ference being occasioned by the tenant, in the latter case, executing the repairs; there the right to vote could not arise out of the occupation of the house let for 8%, and there is no ground for conferring the franchise in respect of the occupation of the other. Another mode of testing the meaning of "clear yearly value" is to compare these words with those found in the Parochial Assessments Act, 6 & 7 W. 4. c. 96. s. 1. The statute enacts, that all rates shall be made on the "net annual value" of the property rated. These words are an exact equivalent for "clear yearly value," and the interpretation given to them by the act is this, — "that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and tithe commutation rent-charge, if any, and deducting therefrom the probable average annual cost of the *repairs, insurance*, and other expenses, if any, necessary to maintain them in a state to command such rent." The rateable value of premises would, therefore, seem to be a fair criterion of their "clear yearly value," and assuming them not to be insured, the charges for repairs must at least be deducted, which, in the present case, would reduce the value of the premises below 10% a year.

No counsel appeared for the respondent.

*Cur. adv. vult.*

TINDAL C. J. now delivered the judgment of the Court.

In this case the point of law reserved by the revising barrister for our determination was, whether in the case of a person claiming the right to vote for a borough by reason of the occupation of a house as tenant, the fair

annual rent was the proper criterion of value without deducting therefrom the average annual expense of landlord's repairs ; and we are of opinion, the revising barrister was right in holding the fair annual rent, without making such deduction, to be the clear yearly value within the meaning of the statute 2 *W. 4. c. 45. s. 27.*

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It was indeed contended before the revising barrister, not only that the average annual value of the landlord's repairs should be deducted from the rent paid by the occupier, but the landlord's expense of insurance also. But this latter appears so plainly to be a voluntary charge on the part of the landlord, who, if he thinks right, may be, and very often is, his own insurer, that we declared our opinion in the course of the argument that the insurance never could be held a necessary deduction in order to ascertain the clear yearly value of the premises. And we think the same as to the deduction of the landlord's repairs.

This is the case of the occupier of a house as tenant, who pays a rent of 10*l.* per annum exclusive of rates and taxes, that is, so far as the tenant is concerned, a clear yearly rent to the landlord of 10*l.* per annum. But the statute requiring that the house must be of the clear yearly value of 10*l.* per annum, in order to confer a qualification, it is undoubtedly not enough to find that the tenant pays a rent of that amount ; for it is manifest such rent is not necessarily the measure of the true value ; the rent may be exorbitant, and such as no other tenant would give ; or it may have been fraudulently fixed at that sum in order to acquire the vote. It is necessary, therefore, in order to satisfy the statute, to shew further that the house is of that clear yearly value, and for that purpose it is found in the



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case before us that 10*l.* per annum is the fair rent of the premises. And whether this is the proof of the clear yearly value is the question before us.

There is some difficulty in ascertaining the true meaning of the act in the use of this expression. When the right to vote depended as it did formerly on property only, there was no difficulty in discovering the clear yearly value. Thus, where the stat. 8 *Hen.* 6. c. 7. ordained that the knights of the shires should be chosen by people “whereof every one shall have free tenement to the value of 40*s.* by the year at the least above all charges;” and again, where the 18 G. 2. c. 18. s. 5. has enacted that no person shall vote without having freehold “of the clear yearly value of 40*s.*, over and above all rents and charges payable out of or in respect of the same,” it was easy to prove the yearly value to the owner, more especially when the sixth section of the latter act had defined the nature of the charges intended to be deducted, by enacting that “no public or parliamentary tax, nor any rate or assessment whatever, should be deemed to be any charge payable out of or in respect of any freehold estate within the meaning of the act.” But in the present case the legislature has created a new qualification for voting; namely, that of the occupier, as tenant, of a house of the clear yearly value of not less than 10*l.*; applying to the case of the tenant a description or definition which, in strictness of language, and under former enactments, belonged exclusively to the owner of the property. For, in strict propriety of language, although the rent may be a fair criterion of the value to the landlord, it cannot be so to the tenant; the value in the case of the latter depending on the use to which he puts it, the profit he

makes by his occupation, and other circumstances that exist in each case, quite independently of his paying 10*l.* a year rent to the landlord. But we think it obvious the legislature could never have intended that the right of a tenant to vote should depend upon calculations so nice, artificial, and difficult of application. And although it may not be easy to give effect to all the words of the section, we think they may well bear the meaning, that where a house is occupied by a tenant at the clear annual rent of 10*l.*, if such house is fairly worth that rent to any one wanting to occupy it, if the house would generally fetch such rent, the occupation is that of a house of the clear yearly value of not less than 10*l.*, so far as the tenant is concerned. For we think the legislature intended that any person who is in such a condition, both as to credit and circumstances, as to be allowed by the owner of a house which is fairly worth the clear sum of 10*l.* to rent by the year, to become his tenant thereof, is a fit person also to have a vote in the election of a member of parliament for a borough.

In the course of the argument we were referred to cases of rating under the Settlement Act, 13 & 14 *Car.* 2. c. 12. But we think the appellant can derive no benefit from those cases. The rateable value of property has generally been considered that which it would fairly let for, the tenant bearing all such public burdens as by law attach to his occupation. And in consequence of disputes as to the principle upon which properties more or less perishable should be rated, the statute 6 & 7 *W.* 4. c. 96. was passed, and that statute prescribed the mode of ascertaining the rateable value of all kinds of property, viz. that it should be the net annual value

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left, after making certain deductions specified in the act, from the rent that could be obtained for it; and if we had found in the 2 *W. 4. c. 45. s. 27.* the expression “rateable value,” we must have ascertained such value by applying the rule laid down by the 6 & 7 *W. 4. c. 96.* But the expression which we have to construe is “clear yearly value,” without any direction as to the mode of ascertaining it. The consideration of these statutes, therefore, made entirely *diverso intuitu* does not, as we conceive, militate against the principle we have laid down as that which ought to give us the interpretation of the twenty-seventh section of the 2 *W. 4. c. 45.* And for these reasons we think the decision of the revising barrister is to be affirmed.

Decision affirmed.

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JUDSON, Appellant, and LUCKETT, Respondent.

“Part of a house” is a sufficient description of an occupier’s qualification to vote for a city or borough, within the meaning of 2 *Will. 4. c. 45. s. 27.*

The name of the landlord of a house was on the rate, with the house &c. opposite to it, and the tenant’s name was

under that of the landlord, but nothing was carried out against the name of the tenant, nor were the two names connected by a bracket or otherwise.—*Held*, that the tenant was rated for the house (a).

AT a Court held before *Thomas James Arnold, Esq.*, the revising barrister for the city of *London, W.E.* *Lockett* duly objected to the name of *W. H. Judson* being retained on the list of persons entitled to vote in the election of members for that city, in respect of the occupation of part of a house, 22, *Cannon Street*, in the parish of *St. Swithin, London Stone*. The revising barrister expunged the name of the said *W. H. Judson* from the said list, subject to an appeal to the Court of Common Pleas, upon the following case:—

(a) See *Pariente v. Lockett*, ante, p. 441.

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It was contended on behalf of the respondent, that the qualification of the appellant, as stated in the said list, was insufficient in law to entitle him to a vote, and therefore the revising barrister must expunge the name of the appellant under the fortieth section of the 6 *Vict.* c. 18.; and on behalf of the appellant, that the qualification, as stated in the said list, was sufficient, or, if not, the description of the premises in the occupation of the appellant, as part of a house, was a mistake, which could be proved to have been made in the said list, which mistake the revising barrister by the same section had power to amend. The revising barrister thereupon received evidence of the actual nature of the appellant's qualification, and it was proved that he occupied as a place of residence the upper part of the said house and the kitchen, having a distinct and separate entrance thereto, of the key whereof he had the exclusive possession. His landlord occupied the ground floor as a shop, having a distinct and separate entrance thereto. The appellant's name was in all the poor-rates made in the said parish, in the year ending 31st of *July* 1845, under that of his landlord; but nothing was carried out against the name of the appellant, nor were the names of the appellant and his landlord connected by bracket or otherwise in the rate-book. The assistant-overseer of the parish stated in his evidence, that it was the intention of the overseers in putting the appellant's name on the rate-book, to rate him. It was further contended on behalf of the respondent, that the appellant was not rated to the relief of the poor. The revising barrister decided that the qualification of the appellant as stated in the said list, was insufficient in law to entitle him to vote, and that he, the revising barrister, had no power

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to change the description of the said qualification; and further, that the appellant was not duly rated. If the court should be of opinion that the said decision was wrong upon both points, the name of the appellant was to be re-inserted in the said list of voters as follows:—

William Henry Judson.	22, Cannon-street.	House.	22, Cannon street.
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*Welsby* for the appellant (in *Hilary* term, *January 26*). *Wright v. The Town Clerk of Stockport* (a) and *Score v. Huggett* (b) are decisive authorities to shew that an exclusive occupation of part of a house is sufficient to confer the franchise. If so, the party had a right to describe his qualification as it was in fact, and, therefore, there was no necessity for any alteration in the register. But, supposing the description to be insufficient, the revising barrister had power to correct it under the fortieth section of stat. 6 *Vict. c. 18*. Either it is a mistake within the first part of the clause, or, at all events, it is nothing more than an insufficient description of the qualification, which was supplied by evidence to the satisfaction of the barrister. In *Daniel v. Camplin* (c), where a party was on the list of voters in respect of a house which he occupied jointly with another person, it was held that it was not necessary to state the fact of the joint occupation in the list of voters. It was also argued in that case that the barrister had power to amend the description of the qualification; but the point, though raised, was not formally decided. In the course of the argument, however, *Tindal C. J.* observed,

(a) *Antè*, p. 32.(b) *Antè*, p. 198.(c) *Antè*, p. 264.

"He (the revising barrister) may alter the description for the purpose of more clearly defining the qualification." (a) As to the rating, the objection turns upon the omission of a circumflex connecting the name of the tenant with that of the landlord. It is clear that the latter is rated in respect of the house, and the fair inference from an inspection of the rate is, that they are jointly rated for the premises.

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*Grove*, contra. In *Daniel v. Camplin* (b) there was a sufficient statement of the "nature of the qualification," which, as laid down by the Court in *Hitchins v. Brown* (c) means the *genus* of qualification in respect of which the vote is claimed. *Daniel v. Coulsting* (d) is to the same effect. There, a building which had been formerly used as a dwelling-house, but was at the time used for warehousing goods, and for workshops &c., was held to be properly described by the word "house." But the description "part of a house" does not apply to any of the qualifications enumerated in the twenty-seventh section of the Reform Act, "house, warehouse, counting-house, shop, or other building." The qualification, therefore, as described in the list of voters, being a different qualification from those required by the act, the revising barrister had no power to correct it. With regard to the rating, there is nothing carried out opposite the appellant's name, to shew in respect of what property he is rated. In *Wright v. The Town Clerk of Stockport* (e) the case expressly states that in the rate-book the landlord and all the tenants appeared to

(a) *Antè*, p. 268.(b) *Antè*, p. 264.(c) *Antè*, p. 328.(d) *Antè*, p. 230.(e) *Antè*, p. 32.

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be rated jointly. *Moss v. The Overseers of St. Michael, Lichfield* (a) was also cited.

*Welsby* replied.

*Cur. adv. vult.*

TINDAL C. J. In this case the nature of the qualification in respect of which the appellant claimed to vote, appeared on the list of voters made out by the overseers as "part of a house." The revising barrister held the description to be insufficient, and the first question reserved for our determination is, whether such description was sufficient in point of law. We have already held, in more than one instance, that there may be an occupation of a part or a portion of a house so completely separated from the residue as to constitute the occupation of a house as tenant, within the meaning of the twenty-seventh section of the stat. 2 W. 4. c. 45.; and in this case no question is raised as to the occupation being sufficiently separate in that respect, but solely on the point whether the description of the qualification on the list is sufficient; and we think it is sufficient. The description is precisely true, in fact, according to the common understanding of the words, and still may denote such a house as will confer, and, as we must take it in this case, does confer a qualification. It becomes, therefore, unnecessary to consider the second point reserved, namely, whether the revising barrister had the power of amending under the fortieth section of the Registration Act. The third point reserved was as to the rating. It appeared that the land-

(a) *Ante*, p. 184.

lord occupied one part of the house and the appellant the other (no question being before us as to the sufficiency of the occupation), and that the landlord's name was on the rate, with the house opposite to his name, and the appellant's name under that of the landlord; but nothing was carried out against the name of the appellant, nor were the names connected by bracket or otherwise, and on this state of facts the barrister held the appellant not to be properly rated. But we think upon these facts it appears, that the name of the appellant is on the rate as a person charged, and that a rate so made would be construed to charge the appellant in respect of the premises inserted opposite to the landlord's name in the line above, just as effectually as if the word "ditto" had been inserted, or a bracket had been used. We therefore think the decision of the revising barrister is wrong on both these points, and that it must be reversed, and the name of the appellant restored to the list.

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Decision reversed.



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February 23. MURRAY, Appellant, and THORNILEY, Respondent.

Actual possession of a rent-charge, within the meaning of stat. 2 Will. 4. c. 45. s. 26. is the actual manual receipt of the rent itself, or some part of it, or of something in lieu of it.

Therefore, where a rent-charge was created by deed, dated January 1845, whereby the first payment was to become due on the 1st of January 1846 — Held, that the grantee was not entitled to be registered, as having been in the actual possession thereof for six calendar months previous to the last day of July, pursuant to that statute.

THIS was an appeal from the decision of *William Yardley*, Esq., the revising barrister for the northern division of *Cheshire*, who stated the following case: —

*John Thorniley* objected to the names of *James Murray* and *William M'Connell* being retained in the list of voters for the township of *Stockport*, in respect of the qualification following:

Name.	Place of Abode.	Nature of Qualification.	Where situate, &c.
James Murray.	Apsley Place, Ardwick, Manchester.	Undivided share of freehold rent-charge.	Giles Bury, Joseph Bury, and Thomas Steel owners of the property out of which same is issuing, situate No. 15, Higher Hillgate, Stockport.
William M'Connell.	The Polygon, Ardwick, near Manchester.	Undivided share of freehold rent-charge.	Giles Bury, Joseph Bury, and Thomas Steel owners of the property out of which same is issuing, situate No. 15, Higher Hillgate, Stockport.

A grant and conveyance to the said *James Murray* and *William M'Connell*, and their heirs, of a rent of

6*l.* 3*s.*, issuing out of a freehold land of adequate value, was produced, dated the 29th of *January* 1845. This rent-charge had been created by a deed dated the 28th of *January* 1845, by which it was granted as follows: — “One clear yearly rent-charge, or sum of 6*l.* 3*s.*, on the 1st of *January* in every year, the first payment to become due and be made on the 1st of *January* then next ensuing.”

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It was objected, that a rent was an incorporeal hereditament, and as such was not capable of being possessed, except by the act of receiving; or that, at all events, the claimants could not be said to be possessed, or in the actual receipt of the rents until it became due; and that, inasmuch as the first payment of the said rent would not become due until the 1st of *January*, 1846, the claimants had not been possessed of the hereditaments, in respect of which they claimed to be registered, for six calendar months previous to the last day of *July*, 1845, as required by the 2 *W.* 4. c. 45. s. 26.

The decision upon the whole case was that the names of the said *James Murray* and *William M'Connell* should be expunged from the list of claimants for the said township; and the decision upon the point of law in question was, that the said claimants had not been possessed, or in the actual receipt of the said rent-charge, in respect of which they claimed to be registered, for six calendar months next previous to the last day of *July*, 1845.

*Cockburn* (with whom was *Kinglake* Serjt.), for the appellant (in *Hilary* term, *January* 22.). The stat.

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2 *W. 4. c. 45. s. 26.* enacts that no person shall be registered as a person entitled to vote for a county "in respect of his estate or interest in any lands or tenements, as a freeholder, copyholder, customary tenant, or tenant in ancient demesne, unless he shall have been in the actual possession thereof, or in the receipt of the rents and profits thereof for his own use, for six calendar months at least next previous to the last day of *July*." in each year. The question is, therefore, whether the parties were not "in the actual possession" of the rent-charge for six months before the 31st day of *July*, and it is submitted that they had such possession. The object of the statute was to prevent occasionality, and therefore it is required that the qualification shall have existed at least six calendar months, and that the estate shall have been in the actual possession of the party qualified, where the subject-matter is of such a nature as to admit of it. But a rent-charge is an incorporeal hereditament, of which no *actual* possession can be taken. The moment the rent-charge was created the title was complete, and no subsequent payment can amend that which is already perfect. The fact that the first payment of rent was not to become due till the 1st of *January*, 1846, has, therefore, no bearing upon the case.

*Welsby* (*Channell* Serjt. was with him) for the respondent. The words "actual possession" in the twenty-sixth section of the Reform Act, as applied to incorporeal hereditaments, must be construed to mean an "actual seisin." Now, there can be no actual seisin of rent until there has been some payment on account of it, or until the day of payment has arrived. In *Gilbert*

on *Rents* (a), the law is thus laid down: "A rent-charge and a rent-seck differ only in this, that the grantee has a remedy for the recovery of the former without an *actual seisin*, but not for the latter;" and in pointing out in what cases a writ of assize will lie, the learned author says "This writ of assize restores the party to the actual seisin in the freehold; \* \* \* and consequently the party that brings this writ must found it upon an *actual seisin*, of which he has been divested, for otherwise this remedy is not commensurate to his case. \* \* \* There must be an actual seisin of the rent in the case of rent services to ground an assize, because this is a remedy for the restitution of the freehold of which the party was once in seisin or possession. \* \* \* Therefore, if there be lord and tenant by rent-service, and the lord grants the services to another, and the tenant attorns by a penny, and the grantee afterwards distrains for the rent in arrear, and the tenant rescues the distress, yet the grantee shall have no assize for the rent, but a writ of rescue, because the penny was given in the name of attornment, which only shews the tenant's concurrence to the grant, and that he is willing to pay the rent when it becomes due to the grantee, as he formerly did to his first lord. But as such concurrence or approbation of the tenant only obliges him to pay the rent when it becomes due; but does not give the grantee an actual seisin before it is paid him, consequently there can be no disseisin of a thing of which a man was never in possession. But if the penny had been given by way of seisin of the rent, that had been sufficient to ground an assize, because here the grantee

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(a) P. 38. 106. *et seq.*

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is put into possession of the rent by the tenant himself; and therefore, if the possession be violated, the grantee may have his assize, which is the proper method or remedy to restore that possession." [*Tindal* C.J. The authorities are collected in *Com. Dig.* tit. *Seisin*.] They are also to be found in *Vin. Abrid.* tit. *Seisin* (A). So, before the stat. 3 & 4 W. 4. c. 106. ss. 1, 2, there must have been an actual seisin of the rent by the elder brother, to entitle his sister of the whole blood to take in preference to the younger brother of the half blood (a). At the time, therefore, that the Reform Act passed, actual seisin of a rent was a thing well known to the law, and the twenty-sixth section, in requiring "actual possession" or "the receipt of the rents and profits" must have intended to embrace the corresponding instance of an actual seisin of a rent-charge.

*Cockburn*, in reply. Admitting the distinction between a seisin in fact and a seisin in law, it is submitted that all that the Reform Act required was, that the grantee of a rent-charge should have a complete title six months before the last day of *July*. The stat. 3 G. 3. c. 24., intituled, "An act to prevent fraudulent and occasional votes in the elections of knights of the shire, and of members for cities and towns which are counties of themselves, so far as relates to the right of voting by virtue of an annuity or *rent-charge*," enacts (sect. 3) that no person shall vote in respect thereof, unless a memorial of the *grant* of such annuity or rent-charge shall have been registered twelve calendar months before the election. That statute has since been repealed

(a) See *Co. Litt.* 14 b.

by stat. 6 *Vict. c.* 18. s. 72., but it may be referred to as indicating that at the time when the Reform Act passed, it was considered sufficient to prevent occasional voting, that the grant of the rent-charge should have been executed six calendar months before the election.

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The judgment of the Court was now delivered by

TINDAL C. J. In this case the claim to the right to vote was made in respect of a freehold rent-charge. The rent-charge was created by deed, bearing date *January 28th*, 1845, by which the same was made payable on the 1st day of *January* in every year, the first payment to become due and be made on the 1st day of *January*, 1846. The objection taken before the revising barrister was, that the claimant had no title to be put upon the register, inasmuch as he had not been "in the actual possession, or in the receipt of the rents and profits for his own use for six calendar months at least, next previous to the last day of *July*" next preceding the registration, as required by the 26th section of the 2 *W. 4. c.* 45. The revising barrister allowed the objection, and directed the name of the claimant to be expunged, and after the argument which has been heard, it appears to my brothers *Cresswell* and *Erle*, and to myself, that the decision of the revising barrister is right. My brother *Maule*, not having been present during the whole of the argument, declines giving any opinion. It was contended on the part of the appellant, that he had the complete right to the rent-charge from the time of the making of the deed by which it was granted, and that he had the actual possession also

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within the meaning of the statute, because he had all the possession of which the subject-matter is capable before the first day of payment had actually arrived. The question undoubtedly turns upon the meaning of the words "actual possession," and we think those words mean a possession in fact, as contradistinguished from a possession in law, and that as the possession in fact of a rent-charge must be the actual manual receipt of the rent itself, or some part of it, or of something in lieu of it, so there could be no such possession in fact in this case, when the first payment of the rent did not become due until after the expiration of the month of *July*, and where nothing whatever took place but the mere execution of the deed. There is a long course of authorities fully establishing the distinction between a possession or seisin in fact of a rent-charge, and a possession or seisin in law. *Littleton*, s. 235, is an authority in point: "And so it is, if a man grant by his deed a yearly rent issuing out of his land to another, &c., if the grantor thereafter pay to the grantee a penny or a halfpenny in name of seisin of the rent, then, if after the next day of payment the rent be denied, the grantee may have an assize, or else not," &c.: and Lord *Coke*, in his commentary on this passage, is equally decisive: "By this (&c.), is implied, that the grant and delivery of the deed is no seisin of the rent; and that a seisin in law, which the grantee hath by the grant, is not sufficient to maintain an assize, or any other real action, but there must be an actual seisin." (a) And in *Com. Dig.* tit. *Seisin*, (C.) and (D.), the older authorities are brought together, establishing the dis-

(a) See *Co. Litt.* 160 a.

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inction in this respect between a seisin in law and a seisin in fact, or, as it is called, an actual seisin. And this appears more distinctly in the commentary of Lord Coke on the eighth section of *Littleton*, which relates to the doctrine of *possessio fratris*, where Lord Coke says (a), "What then is the law of a rent, advowson, or such things that lie in grant? If a rent or an advowson shall descend to the elder son, and he dieth before he have seisin of the rent, or present to the church, the rent or advowson shall descend to the youngest son" (that is by the other venter), "for that he must make himself heir to his father." And, although Lord Coke there distinguishes the law as to the case of tenant by the curtesy, where, in favour of that estate the husband shall have the rent, although his wife dies before the rent day, it makes no difference as to the present argument. The actual possession of rent being therefore a well-known legal phrase or expression, the legislature cannot be taken to have used it in any other than such well known sense, that is, as contradistinguished from such possession in law, or right to the rent-charge, as the bare delivery of the deed or grant would confer. And when it is said that the authorities only shew that such seisin in fact is necessary in order to maintain an assize, or make a *possessio fratris*, but that it by no means follows that it is necessary to confer a vote, the answer is, that it is a mere assumption on the part of the appellant that the expression is used in the statute in a limited and restricted sense, and, at all events the burthen of proving this is cast upon the appellant, the statute having applied the expression to the right of the

(a) See *Co. Litt.* 15 b.



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claimant to be put upon the register. And as it is quite clear that in the case of land there must be more than the execution of the conveyance, — that there must be actual possession or receipt of the rents and profits, — there seems no reason why, in the case of an incorporeal hereditament, to which the provision of the statute equally applies, there should not be such further actual possession as the nature of the subject itself is capable of. And, accordingly, by various statutes before the statute 2 *W.* 4., the legislature has made a similar provision in the very same terms, for the prevention of the occasional acquirements of freeholds for the purpose of voting. Such are the 12 *G.* 2. *c.* 18. *s.* 5., requiring such actual possession for twelve calendar months before the election. Again, the 3 *G.* 3. *c.* 24., which, after reciting that annuities and rent-charges are of a private nature, and therefore liable to fraudulent practices in elections, enacts that no person shall vote in respect of any annuity or rent-charge, unless a certificate upon oath shall be entered twelve calendar months before the first day of the election with the clerk of the peace of the county, and a memorial also of the grant registered with the clerk of the peace for the same period of time. And as this statute is repealed by the statute 6 *Vict.* *c.* 18. *s.* 72. and no other provision enacted in lieu of it, it may well be inferred that under the 2 *W.* 4. *c.* 45. *s.* 26. the legislature intended something more than the mere production of the deed, by requiring actual possession for six calendar months. We therefore think the decision is right, and affirm the same.

Decision affirmed.

# CASES

ARGUED AND DETERMINED

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IN THE

## COURT OF COMMON PLEAS

UNDER THE STAT. 6 VICT. c. 18.

IN

MICHAELMAS TERM,

IN THE

TENTH YEAR OF THE REIGN OF VICTORIA.

PRING, Appellant, and ESTCOURT, Respondent.

November 6.

**ARNOLD**, on the fifth day of term, applied for leave to enter this appeal, which had been consolidated by the revising barrister. The statement of the case was contained in two sheets of paper, each of which the barrister had signed, but he had not signed the indorsement required by the forty-second section of the stat. 6 Vict. c. 18. The statement, with the notice to the Master of the appellant's intention to prosecute the appeal, was taken to the Master's office within the first four days of *Michaelmas* term, but the Master had refused to enter it, because the revising barrister had not signed the indorsement. The revising barrister was out of town, and the appellant had been unable to pro-

The statement of facts signed by the revising barrister, should also be signed by him on the back thereof, whether the appeal be consolidated or not; but where the barrister had omitted to sign the indorsement, and the appellant had used due diligence to procure his signature thereto, the Court allowed an appeal to be entered, *nunc pro tunc*, on the fifth

day of term, reserving the right of the respondent to object to the entry on the hearing of the appeal.

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cure his signature to the indorsement. It was now submitted that the signature to the indorsement was not essential, as the forty-second section of the act was only directory in its terms, and that at all events the signature was not required by the forty-fourth section, which applied to consolidated appeals. In a consolidated appeal, the number of appellants might amount to 300 or more, and it would be impossible to introduce the whole of their Christian names, surnames, and places of abode, on the back of the case. [*Maule J.* The forty-fourth section says that the barrister shall sign the statement “as hereinbefore mentioned;” that, I think, comprehends all that is before mentioned as to the signature.] It was submitted that, under the peculiar circumstances of the case, the appeal might be entered *nunc pro tunc*.

*Per Curiam.* We think that due diligence has been used, and therefore the appeal may be entered *nunc pro tunc*, upon the signature to the indorsement being obtained; leaving it open to the respondent to contend, on the argument, that the appeal should not have been so entered (a).

(a) See *Wanklyn v. Woollet*, post.

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PETHERIDGE, Appellant, and ASH, Respondent. November 10.

**DOWLING**, Serjt., applied for leave to enter this appeal *nunc pro tunc*. The affidavits upon which he moved stated, that the attorney in the country went on the 4th of *November* from *Ashburton*, where he lived, to *Dartmouth*, where the appellant resided, for the purpose of obtaining his signature to the notice of appeal, and to serve the respondent; that he arrived at *Dartmouth* at twelve o'clock; that the appellant was then from home, and did not return until six o'clock in the evening, when he signed the notice of appeal to the respondent, and the notice to the Master of the Common Pleas of his intention to prosecute the appeal. The attorney then served the respondent, and made the usual affidavit of service. By the time these things were done, the mail had left *Dartmouth*. The several documents were therefore despatched by coach, and were not delivered to the *London* agents until the evening of the 5th of *November*, too late to be entered on that, the last of the four days, with the Master. On the morning of that day, the *London* agent had taken the draft case and the paper books to the Rule Office, but the Master refused to enter the appeal unless the requisite notice was also brought. The learned serjeant admitted that the notice to the Master had not been given in time, but submitted that the Court had a discretionary power to grant an application like the pre-

The Court refused to allow an appeal to be entered *nunc pro tunc*, where the appellant's attorney in the country had omitted to obtain his client's signature to the notice to prosecute the appeal till the third day of *Michaelmas* term, and the notice consequently did not reach *London* on the fourth day of term before the Master's office was closed.

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ASH.

sent, under the stat. 6 *Vict. c.* 18. s. 62., and he referred to *Autey v. Topham* (a).

WILDE, C.J. I can see no ground for the interference of the Court in this case, even if we had the power. The appellant's attorney in the country did not think of applying for his client's signature until the very last moment, though he must have known long before that it was necessary, and when he did apply, his client was absent, as it was not at all unlikely he would be.

Application refused.

(a) *Antè*, p. 1.

November 10. ELLIOTT, Appellant, and The Overseers of St. MARY WITHIN, Respondents.

The delivery of paper books is a matter quite within the discretion of the Court, and where they had not been delivered to the judges' clerks four clear days before the first day appointed for hearing the appeals, the Court permitted their delivery *nunc pro tunc*, there appearing to be sufficient time to enable the judges to peruse them.

PEARSON applied on behalf of the appellant, for leave to deliver the requisite paper books to the Judges. *Thursday, November 12th*, was the first of the days appointed for hearing the appeals, but notice of the days fixed for that purpose had not been posted up in the Court before *Saturday, the 7th of November*. The appellant's attorney was consequently unable to deliver the paper books before *Monday, November 9th*, and the judges' clerks had refused to receive them, the tender not having been made on a day which left four clear days before the day appointed for the argument. The appeal stood 20th on the list. *Pearson* referred to *Croucher v. Browne* (b) as an authority for the application, which was not opposed by the respondent.

(b) *Antè*, p. 303.

*Per Curiam.* The consent of the respondent does not alter the case. The paper books are for the convenience of the judges, and quite within their discretion, and as it appears that some time may elapse before the appeal can be heard, the Court will grant the application.

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Within.

Application granted (*a*).

(*a*) **BUSHER, Appellant, and THOMPSON, Respondent.**

In this case, *Stock* made a similar application on behalf of the appellant, and stated that his attorney had been under the impression that the paper books would be tendered in time, if they were delivered four clear days before the actual day of hearing the argument, which was not likely to be on *Thursday, November 12th*, as the appeal stood ninth on the list.

The Court. You come rather late ; but as we shall rise at one o'clock on *Thursday*, the application may be granted.

Application granted.

**PRING, Appellant, and ESTCOURT, Respondent.**

*ARNOLD*, on a subsequent day, moved for leave to deliver paper books. He referred to the circumstances stated *antè*, p. 1., and prayed that, as the revising barrister had now signed the indorsement of the case, the appellant might deliver his paper books *nunc pro tunc*.

Application granted.

**NICKS, Appellant, and FIELD, Respondent.**

*MELLOR*, (*November 16th*) made a similar application on the behalf of the respondent in this case. He had the consent in writing of the appellant to the application. [*Wilde C. J.* The term is now far advanced.] The only result of the refusal of the Court to allow the respondent to deliver paper books would be, that the appellant would be at liberty to deliver them for him.

*Wilde C. J.* That being so, we think that, under the circumstances, the application may be granted.

Application granted.

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November 12.

HAYDEN, Appellant, and The Overseers of  
TIVERTON, Respondents.

A rent-charge which had been originally created in 1838, payable quarterly, and which had been regularly paid to the grantee up to the 29th September, 1845, was by him assigned on the 19th January 1846, to A., B. and C., in trust for themselves, D., and others. The first payment of the rent after the assignment, was on the 29th April following.

Held, that D. was not entitled to be registered in respect of his having been six months in actual possession of the rent-charge, within the meaning of stat. 2 Will. 4. c. 45. s. 26.

THIS was a consolidated appeal from the decision of John Tyrrell, Esquire, the revising barrister for the eastern division of the county of Somerset, who stated the following case : —

Thomas Serel objected to the name of Richard Ainsworth being retained in the list of voters for the parish of Tiverton. R. Ainsworth had claimed, and had been placed upon the list of claimants, in the following form : —

Ainsworth, Richard.	Redcliffe Parade.	Undivided Share of a Freehold Rent-charge.	Charles Wilkins, Tiverton Cloth- mills, Tiverton.
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It appeared that eight years ago, the above-named Charles Wilkins, in consideration of 2400*l.*, had effectually granted to William Naish, his heirs and assigns, a rent-charge of 100*l.* a year, payable quarterly, for ever, issuing out of the cloth-mills at Tiverton, then the property of the grantor, and then and now in his possession, and of sufficient value. Such rent-charge was regularly paid to William Naish from the time it was granted to him till the 29th of September, 1845. On the 19th January last, William Naish, in consideration of 2520*l.*, duly conveyed the whole of his interest in this rent-charge to W. Tothill, J. Fry, and S. P. Jackson, and their heirs and assigns; and, upon the same day, an indenture was executed between the last-mentioned

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three persons and forty-seven other persons, of whom *Richard Ainsworth* was one, whereby it appeared that *W. Tothill*, *J. Fry*, and *S. P. Jackson* held the rent-charge in trust for themselves, *Richard Ainsworth* and the forty-six other persons, parties to the last-mentioned indenture, and their respective heirs and assigns, as tenants in common. The consideration for the rent-charge and the costs of conveyance, were paid in equal proportion by each of these fifty purchasers, parties to the last-mentioned indenture. On the 9th of *April* last, one of the trustees applied to *Mr. Wilkins* for the rent due on the 25th of *March*, and was then informed that the property out of which the rent-charge is payable, had become the property of the National Provincial Bank of *England*; that *Mr. Wilkins* was then only tenant thereof, and awaited the authority of the bank to pay the rent-charge to the trustees instead of *Mr. Naish*. On the 29th *April* last, *Mr. Wilkins* paid to the trustees the sum of 48*l.* 10*s.* 10*d.*, being the half-year's rent due in the *March* preceding, less the income tax thereon. The said sum of 48*l.* 10*s.* 10*d.*, the trustees immediately divided equally among themselves, *Richard Ainsworth*, and the forty-six other persons entitled thereto. *Mr. Wilkins* still continues to occupy these mills as tenant, and he occupies other cloth-mills adjoining, the whole of which mills are commonly called "*Tiverton Cloth-Mills*;" but, by persons in the factory, and by some persons in the village, the mills are distinguished as the Upper and the Lower Mills; and it is upon that part of the property so distinguished as the Lower Mills that the rent in question is charged. At the hearing before the revising barrister, the objector contended, first, that the deduction of the income tax,



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which the tenant had a right to make, and had made, from the rent, reduced the freehold of each person below the requisite value. The revising barrister decided, that each person, notwithstanding such deduction, had a freehold of 40s. a year. It was next objected, that the name of the actual owner of the property should have appeared, and not the name of *Charles Wilkins*, who had sold the property five years before. The revising barrister decided, that, inasmuch as the fourth column in the list was for the sole purpose of identifying the property, the name of *Charles Wilkins*, who was, in the neighbourhood, the reputed owner, was sufficient; but that, if not, he had the power, under the statute, to correct the mistake, if it was one, and insert the names of *Henry Sharp* and others, the persons to whom the property had been conveyed, in trust for the National Provincial Bank of *England*. The next objection was, that the situation of the property was not correctly stated; that, instead of "Cloth-Mills," it should have been "Lower Cloth-Mills." The revising barrister decided, that the description of the property was sufficient; but that, if not, he had the power, under the act, to describe it more clearly and accurately, by inserting the word "Lower." It was lastly objected, that *Richard Ainsworth* was not in the actual possession of his freehold, or in the receipt of the rents and profits thereof for his own use, for six calendar months next previous to the last day of *July* in the present year. The revising barrister decided that he was, and consequently retained the name of *Richard Ainsworth* upon the list.

*Cockburn* for the appellant. It will only be necessary to trouble the Court with the last objection, which turns

on the twenty-sixth section of the Reform Act. That section provides "that no person shall be entitled to vote in the election of any knight or knights of the shire to serve in any future parliament, unless he shall have been duly registered according to the provisions hereinafter contained; and that no person shall be so registered in any year in respect of his estate or interest in any lands or tenements, as a freeholder, copyholder, customary tenant, or tenant in ancient demesne, unless he shall have been in the actual possession thereof, or in the receipt of the rents and profits thereof for his own use, for six calendar months at least next previous to the last day of *July* in such year." The construction of this clause was settled by the decision of the Court in *Murray v. Thorniley* (a), which governs the present case. It was there held, that the grantee of a rent-charge created by deed, dated *January* 1845, whereby the first payment was to become due on the 1st of *January* 1846, was not entitled to be registered, as having been in the actual possession thereof for six calendar months next previous to the last day of *July* 1845. The only distinction between that case and the present is, that here a payment was made on the 29th of *April* 1846, while in *Murray v. Thorniley* (a) there had been no payment at all; but the difference is immaterial. In neither case was there actual possession, (which *Tindal* C. J. delivering the judgment of the Court, defines to be "the actual manual receipt of the rent itself, or some part of it, or of something in lieu of it (b),") for six months previous to the last day of *July*; and therefore the revising barrister was wrong in putting *Ainsworth's* name upon the register.

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(a) *Antè*, p. 496.(b) *Antè*, p. 502.

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*Kinglake* Serjt. for the respondents. *Murray v. Thorniley (a)* is clearly distinguishable from the present case. This is not an original rent-charge created for the first time, but one created eight years ago, of which the grantee regularly received the rents and profits, till he assigned it for a valuable consideration to the present claimants. *Naish*, therefore, had been in the actual manual possession of the rent-charge, and his seisin was transferred to the appellant and his co-vendees; or, at all events, the seisin continued in *Naish*, and upon the sale in *January* he became a trustee for the claimant, whose equitable interest in the rent-charge was sufficient to give him a right to be registered. The judgment of the Court in *Murray v. Thorniley (a)* proceeded upon the ground that there never had been any actual seisin of the rent at all, by any body, and consequently that no assize could have been maintained for it; but here an assize would have been maintainable. Further, upon the 29th of *April*, when the first quarter's payment was made, there was an actual possession of the rent which had become due on the 25th of *March*, and the seisin must therefore be taken to have relation back to the 19th of *January*, the date of the assignment.

*Cockburn*, in reply. As to the argument on the ground of equitable possession, it is clear that *Naish* had divested himself of the estate in the rent-charge altogether, by the assignment. Until the 29th of *April*, no person was actually possessed of this rent-charge. With regard to the other point, there is no doubt that on the 29th of *April*, there was a sufficient receipt of the rents

(a) *Antè*, p. 496.

and profits, but till payment was made on that day there was no possession, but only a right to receive the rents when they became due.

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WILDE C. J. It is very important that, in cases submitted to us by the revising barristers, the grounds of our decision should be distinct and intelligible; and that no nice refinements which may create embarrassment should be introduced. The meaning of the twenty-sixth section of the Reform Act, with reference to the actual possession of a rent-charge, has already come under the consideration of this Court and been determined. The only question here is, whether the distinction which has been pointed out between the facts of this case and those which appear in the case cited at the bar, is sufficient to take the present case out of the principle established in *Murray v. Thorniley (a)*; and I am of opinion that it is not sufficient. In *Murray v. Thorniley (a)*, the Court decided that actual possession of a rent-charge, within the meaning of stat. 2 W. 4. c. 45. s. 26., is the actual manual receipt of the rent itself, or some part of it, or of something in lieu of it. Here it is found as a fact in the case that there was no actual receipt of the rent-charge by the claimants until the 29th of *April*; but it is said, that it having been created at a time long antecedent to that period, and *Naish* having received the rents, he was a trustee from the execution of the assignment until the day of payment, and therefore that the claimant had a sufficient equitable possession for six months previous to the last day of *July*. But I cannot see any thing in the case which would make

(a) Antè, p. 496.

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*Naish* a trustee for these parties. By executing the assignment *Naish* parted with the whole of his interest; and up to the time of the payment in *April*, there was no money received by any one who could be considered as a trustee for them. For these reasons I think that there is no distinction between this case and that of *Murray v. Thorniley (a)*, and consequently that the claimants were not entitled to be registered.

COLTMAN J. The Court laid down an intelligible rule in the case which has been referred to; and by adhering to it, and insisting upon payment before the actual possession of the rent-charge can be said to begin, we shall at least avoid all chances of collusion between the parties. I think that the decision in *Murray v. Thorniley (a)* governs the present case, and therefore that the revising barrister was wrong.

MAULE J. *Murray v. Thorniley (a)* proceeded upon the ground that the twenty-sixth section of the Reform Act required an actual seisin of the rent-charge before the possession therein mentioned could be said to have been acquired; and taking that to be so, and the decision to be right, the question here is whether there had been a seisin of this particular rent-charge by the claimants, for six months previous to the last day of *July*. Now, the authorities referred to in that case on the question of seisin shew that a seisin may be acquired by a payment of rent either before or after the rent is due, but that it is always contemporaneous with a payment. Here the first payment was made to the claim-

(a) *Antè*, p. 496.

ants on the 29th of *April*; on that day they were for the first time actually seised of this rent-charge; and, therefore, on the 31st of *July* following, they had not been in possession of the rent-charge for six calendar months. The attempt to distinguish this case from *Murray v. Thorniley* (a) has entirely failed, and there is no pretence for saying that *Naish* was a trustee.

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WILLIAMS J. concurred.

Decision reversed.

(a) *Antè*, p. 496.

EDSWORTH, Appellant, and FARRER, Respondent. November 12.

UPON an appeal from the decision of *John William Harden*, Esq., the revising barrister for the borough of *Lancaster*, the following case was stated for the opinion of the Court:

*Richard Farrer* objected to the name of *John Edsworth* being retained in the list of persons entitled to vote. The name of the said *John Edsworth* was in the list published by the town-clerk of the said borough. The notice of objection, which had been duly served upon the said *John Edsworth*, was as follows:

“To Mr. *John Edsworth*.

“I hereby give you notice, that I object to your name being retained in the list of persons entitled to

In the borough of *Lancaster* the register is composed of four separate lists of names, comprising one list for each of the three townships into which the borough is divided, made out by the respective overseers, and a list of freemen made out by the town-clerk.

A notice of objection, describing the objector, who was on the list of freemen, as being “on the

list of voters for the borough of *Lancaster*,” was held insufficient, under stat. 6 *Vict. c.* 18. s. 17., schedule (B.) No. 11. Held also, that the defect in the notice was not an “inaccurate description,” and therefore was not cured by the 101st section.

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vote in the election of members for the borough of *Lancaster*. Dated this 21st day of *August*, 1846.

“ *Richard Farrer*.

“ *Canal Side, near Penny Street, cotton manufacturer, Lancaster, on the list of voters for the borough of Lancaster.*”

The notice to the town-clerk was similarly subscribed. It was objected, on behalf of the said *John Edsworth*, that the said notice of objection was insufficient, and that he was not called upon to prove that he was entitled to have his name retained in the said list of voters. The register of voters for the borough of *Lancaster* is composed of four separate lists of names, namely, one list of 10 $\frac{1}{2}$  householders for each of the three townships forming parts of the said borough, made out and published by the respective overseers; and one list of freemen of the borough at large, without reference to townships, made out and published by the town-clerk. These four lists were duly submitted to the revising barrister for revision at the opening of the said court for the borough of *Lancaster*; and upon one of them, namely, upon the list of freemen for the borough at large, and also upon the existing register, he found the name of *Richard Farrer*, the objector, with his place of abode, as stated in the said notice of objection. It was contended, in support of the objection to the said notice, that it did not comply with the directions given in Schedule (B.) No. 11, of the Registration Act (6 *Vict. c. 18*), and did not state with sufficient particularity upon which of the said four lists the name of the said *Richard Farrer* appeared. The revising barrister was of opinion, that, as no form was given in the said schedule to meet the case of objections

by freemen, excepting in the city of *London*, and as the name of the said *Richard Farrer* did in fact appear upon the only list which was applicable to the borough at large, namely, the town-clerk's list of freemen, the requirements of the seventeenth section of the said Registration Act had been sufficiently complied with: he therefore overruled the said preliminary objections, and required it to be proved that the said *John Edsworth* was entitled to have his name inserted in the said list of voters. The question for the opinion of the Court is, whether the above notice of objection was or was not sufficient in law to call upon the said *John Edsworth* to prove his title to have his name retained in the said list. If the Court shall be of opinion that the said notice was insufficient, the name of the said *John Edsworth* is to be replaced upon the register of voters.

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*Byles* Serjt., for the appellant. The seventeenth section of the stat. 6 *Vict. c. 18.* gives persons whose names appear in the list of voters for a city or borough the right of objecting to the retention of any other person's name; but, as a condition precedent to the exercise of that right, the section requires that the objector shall give a notice to the town-clerk according to the form No. 10. in Schedule (B.), or to the like effect, and a notice to the party objected to according to the form No. 11. in the same schedule. In both of these forms the signature runs thus: "(Signed) *A. B.* of [*place of abode*] on the list of voters for the parish of —." It is plain from the language of the section, taken in connection with these forms, that when the objector's name appears on any other than a parish list, as in the present case, the list should be specifically



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described. Unless this information be given to the party objected to, he has no means of ascertaining whether the party objecting be entitled to object. In many boroughs there are three classes of voters: first, the freemen, whose names appear in one list; secondly, those who are qualified to vote in respect of rights reserved by stat. 2 W. 4. c. 45. s. 38., whose names are published in another list; and, thirdly, the 10% householders in each parish, whose names also appear in a list by themselves. In this case, the objector states that his name appears "on the list of voters for the borough of *Lancaster*." That description would apply to each of the four separate lists of names. In *Tudball v. The Town-clerk of Bristol* (a) a notice of objection described the objector as being "on the list of voters for the parish of *Clifton*," where his name did not appear, being only on the alphabetical list of the freemen of the city of *Bristol*, in which he was stated to be "of the parish of *Clifton*." In delivering judgment, *Tindal* C. J. says (b): "We cannot hold such a notice of objection sufficient, as, where the lists are numerous, it would throw greater difficulty upon the claimant in searching for the objector than the act intended to impose." So, in *Barton v. Ashley* (c), the Court decided that in cities or boroughs where overseers are required to make out two lists of voters, a notice of objection to the overseers must specify the particular list to which the objection refers, even when the name of the party objected to appears in one list only. He referred also to *Knowles v. Brooking* (d).

(a) *Antè*, p. 7.(b) *Antè*, p. 10.(c) *Antè*, p. 307.(d) *Antè*, p. 461.

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*Kinglake*, Serjt., for the respondent. By the fortieth section of the stat. 6 *Vict. c.* 18., the revising barrister cannot call upon a person to prove his qualification, unless service of the notice of objection be first proved; and as it must be inferred from the statement of facts in the case, that the barrister inquired into the sufficiency of the voter's qualification, he must be taken to have applied the provisions of the 101st section of the act, and to have decided that the list upon which the objector described himself to be was "commonly understood" to mean the list of freemen. This, therefore, is a question of fact, upon which the finding of the revising barrister is conclusive. [*Maule J.* That is not so; the barrister has expressly raised the point for the decision of the Court.] Then, it is submitted that the notice is quite sufficient. When the objector describes himself as being "on the list of voters for the borough of *Lancaster*," the only interpretation which the facts of the case will warrant is, that his name appears upon the list of freemen for the borough at large, and not upon either of the three lists made out by the overseers of the respective townships forming parts of the borough. *Barton v. Ashley* (a) has no application to the present case; and *Knowles v. Brooking* (b) is, as far as it goes, an authority in the respondent's favour. There a notice of objection was signed by the objector, with the addition of the true place of his abode, as it was at the time of serving the notice, such place of abode being different from that which appeared against his name upon the list of voters; and the majority of the Court held that the form of the notice was sufficient. *Tudball*

(a) *Antè*, p. 307.(b) *Antè*, p. 461.

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v. *The Town-clerk of Bristol* (a) also, if regarded in a proper light, supports the decision of the revising barrister. The objector in that case was a freeman, and improperly described himself as being on a parish list, which might have had the effect of misleading the party objected to; but no such consequence could have followed in the present case. The party objected to, when he saw that the objector did not describe himself as being on the list of voters for any one of the three townships into which the borough is divided, was bound to search the list of freemen for the borough.

*Byles* Serjt., in reply, referred to *Wansey v. Perkins* (*Quigley's Case*) (b).

WILDE C. J. In these cases we should be equally on our guard against introducing requisitions which were not contemplated by the act, and permitting plain directions to be disobeyed, and thus we shall render the construction of the statute perfectly intelligible to those persons whom its provisions were intended particularly to affect. Upon referring to the seventeenth section of the statute, and the form No. 11. there mentioned, we cannot fail to see what sort of information the Legislature intended the person objected to should receive by the service of the notice of objection upon him. Taking the two together, it appears to me that the objector is bound to specify the particular list upon which his name appears, and the eleventh form gives an example of the mode in which that information is to be furnished. The form, after stating the substance of the

(a) *Antè*, p. 7.

(b) *Antè*, p. 235.

objection, concludes thus: "(Signed) *A. B.* of [*place of abode*] on the list of voters for the parish of ——" thereby intending to require that the particular parish should be described, on the list of voters for which the objector's name is to be found. If the example given in the form does not apply, it is the duty of the objector to see what equivalent information he can afford. Here, the notice of objection states the name and place of abode of the objector, and then adds, "on the list of voters for the borough of *Lancaster*." Now, in one sense, *all* the lists constitute *the* list for the borough, and the notice, therefore, is by no means so precise as the statute requires it to be, and is not calculated to afford that information to the party objected to which it was intended should be supplied. It seems to me, therefore, that the notice of objection was insufficient. If that be so, the question arises, whether it was competent for the revising barrister to treat the omission as an inaccuracy, and to hold that the notice of objection was valid, because the "list of voters" mentioned in the notice was such as was "commonly understood" to mean the list of freemen of the borough. There is nothing in the statement of facts to shew that "on the list of voters for the borough" was commonly understood to mean "on the list of freemen entitled to vote for the borough;" and since the barrister is not empowered to dispense with the requirements of the act, I think he was not at liberty to amend the notice in this respect. None of the cases which have been cited at all break in upon the principle on which I ground my opinion, and therefore it seems to me that the decision of the revising barrister was wrong.

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COLTMAN J. I had at first some difficulty in arriving at the same conclusion as the rest of the Court; but upon the whole, as it is perfectly consistent with what is stated in the notice of objection that the objector might be on one of the householders' lists, and not on the list of freemen, that information which the act requires has not, I think, been given to the party objected to, and therefore the notice of objection is insufficient.

MAULE J. I am of the same opinion. The stat. 6 *Vict. c. 18.* was passed to remedy those defects in the Reform Act which related to registration. One of those defects was the absence of sufficient particularity in the notice of objection. By the seventeenth section of the Registration of Voters Act, the right to object is made to depend upon the insertion of the objector's name in the list of voters, quite independently of the fact whether he is qualified to vote or not. Now, when a person has a power conferred upon him by act of parliament to interfere with the rights of others, such person must shew, by the writing under which he exercises the power, that he falls within the description of the persons contemplated by the act. The statute in the present instance says, that the notice of objection shall be *according to the form* No. 11. Schedule (B.). The form there given is applicable only to the case where the objector is on the list of voters for a parish; but, since the power to object is general, and is given to any person on any list of voters for the borough, it is clear that what the statute meant by the example it gave was, that where the objector's name appeared on the list of voters for a parish, it should be so stated;

and that where his name appeared on any other list, such list should be described with the same particularity. This was intimated by *Tindal C. J.* in *Tudball v. The Town-clerk of Bristol*. His Lordship there says (a), "The party objecting has followed the form given in the act much closer than he need have done, and has followed it falsely. He has described himself as being upon the list of voters for the parish of *Clifton*, his name being, in fact, upon another list, namely, upon the list of the freemen of the city of *Bristol*. We cannot hold such a notice of objection sufficient; as, where the lists of voters are numerous, it would throw greater difficulty upon the claimant in searching for the objector than the act intended to impose." But it has been argued that, assuming the notice not to be in the form required by the seventeenth section, the defect is cured by the 101st section of the statute. I conceive, however, that the words "commonly understood," as used in that section, must be taken to apply to cases where the description given would, in its popular sense, convey precisely the same meaning as if the more accurate and legal description had been employed; as where a person describes a parish by some popular name, or where a part of a name is omitted. In fact, in order to bring a case within the meaning of the 101st section, there should be an inaccurate description of the same thing; which is certainly not the case here. I think if the description in the present case were expanded, it would mean "on one of the four lists of voters for the borough of *Lancaster*;" and that cannot be called an inaccurate mode of saying the same thing

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(a) *Antè*, p. 10.

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as “on the list of freemen entitled to vote for the borough of *Lancaster*,” but refers in truth to something substantially different. On the whole, therefore, I think the notice of objection bad, and that the decision of the revising barrister must be reversed.

WILLIAMS J. concurred.

Decision reversed.

November 16. BEENLEN, Appellant, and HOCKIN, Respondent.

A notice of objection given to the overseers, or to the party objected to, pursuant to stat. 6 Vict. c. 18. s. 17, must state the year of our Lord, in the dating thereof, or it will be insufficient.

Service of a notice of objection upon one of the overseers is good service upon all, although the overseer served be not one of those who signed the list of voters for the parish.

THIS was an appeal from the decision of *James Lancaster Lucena* and *John Shapland Stock*, Esqs., the revising barristers for the borough of *Dartmouth*, who stated the following case :

*Percy Hockin*, on the list of voters for the parish of *St. Saviour*, within the said borough, objected to the name of *John Beenlen* being retained upon the list of voters in the parish of *St. Saviour*. In the notice of objection given to the overseers, and also in the notice of objection given to the party objected to, the date was stated thus : “Dated this 22nd day of *August*.” These notices were signed by the objector on the 22d of *August*, in the year 1846. The notice of objection to the overseers of *St. Saviour*’s was served on one of the churchwardens on the 25th of *August*, 1846. The list of voters made out by the overseers of the said parish of *St. Saviour* was signed by three of the overseers and one of the churchwardens of that parish, but was not signed by the churchwarden of that parish on whom

the notice of objection was served. It was objected, first, that the notices of objection were bad, forasmuch as they omitted to state the year in the dating thereof; and, secondly, that the service of the notice of objection given to the overseers was bad, forasmuch as it was served upon a churchwarden of the parish who had not signed the list. We held the notices of objection to be good, and the service of that given to the churchwarden to be a good service, and expunged the name of the said *John Beenlen* from the list of voters for the said parish of *St. Saviour*.

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*Greenwood* for the appellant. The first question for the decision of the Court in this case arises upon the meaning of the forms No. 10. and No. 11. in Schedule (B.) annexed to stat. *Vict. c. 18.*, coupled with the seventeenth section of that statute. It is submitted that the directions of the act are not complied with, unless the *year* be inserted in the dating of the notice. The seventeenth section of the act requires that the notice of objection given to the overseers shall be made out "according to the form numbered 10. in Schedule (B.), or to the like effect;" and that the notice of objection given to the party objected to shall be "according to the form numbered 11. in the said Schedule (B.)." Each of these forms, as regards the way in which the date should be stated, are identically the same. Both run thus: "Dated this — day of —." It is true that these forms do not expressly require that the year should be stated, but the obvious intention of the Legislature was that the whole of the date should appear on the face of the instrument itself. In the forms No. 6. and No. 7. in the same schedule, which are forms of



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notices of claim, the date includes the year; "Dated this — day of — one thousand eight hundred and —." And the same information ought to be supplied in notices of objection, otherwise if it were only necessary to fill up the blanks in forms No. 10. and No. 11. with any sensible words, they might run thus: "Dated this *third* day of *the week*," or, "Dated this *fifth* day of *the month*." It may be said, on the other side, that neither the overseer nor the party objected to could have been misled by the omission. The question, however, is, as stated by Tindal C. J. in *Wansey v. Perkins (Quigley's Case) (a)*, whether these notices of objection have been given in compliance with the act of parliament. The facility with which a party may be misled is a matter altogether foreign to the inquiry. The revising barristers have found as a fact that the notices were signed in the year 1846, but a notice of objection should speak for itself, and shew that it was dated at a time when the objector had a right to make the objection. His right only accrues after the 31st day of *July*, and the objection can only apply to the list for the current year; and, therefore, unless the year be added to the day of the month, there is no date at all. Public powers must be executed strictly, as well as private powers; *Rex v. Spreyton (b)*. Secondly, the notice of objection to the overseers was not served, as it ought to have been, upon one of the overseers who, in the words of the seventeenth section of the Registration Act, "made out the list" in which the name of the person objected to was inserted. The thirteenth clause of the statute requires the overseers of every

(a) *Ante*, p. 245.

(b) 3 B. &amp; Ad. 818.

parish to make out a list of persons entitled to vote, and then it goes on to say, "and the *said* overseers shall sign such list;" shewing that the list is only to be signed by those who have been actually engaged in making it out. This explains the meaning of the seventeenth section, and indicates that the intention of the Legislature was that the notice should be served only upon one of the overseers who signed the list. If this were not so, a party objecting might serve his notice upon some ornamental churchwarden, who resided at a distance, and never interfered in parochial affairs; in which case the notice might never come to the knowledge of the acting portion of the parish officers.

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*Kinglake*, Serjt., for the respondent. There has been a sufficient compliance in this case with the requirements of the statute. Even if a literal compliance were necessary, the objector will be found to have done all that was required of him. The insertion of the year in forms No. 6. and No. 7., and its omission in No. 10. and No. 11. affords strong ground for believing that the Legislature considered its insertion in the latter forms superfluous. There is no list of voters but the list for the current year, and in the form No. 3. Schedule (B.), published by the overseers, and placed on the church door, the list is without a date. It is only the particular persons whose names are inserted in that list who are entitled to object, and the material part of the seventeenth section is not that which regards the *date* of the objection, but the *service* of it. The section says that the person objecting shall serve his notice "on or before the 25th day of *August*." [*Maule J.* The Legislature did not deem it superfluous to add "*in that year*."] ]

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Whatever is done under the provisions of the act must be done in that year. If an objector appears before the revising barrister, he must prove that his notice of objection was served on or before the 25th of *August* in the current year. “*The list of voters*” means “the list for 1846,” and the notice of objection is dated “*this 22nd day of August,*” that is, “the 22nd day of *August, 1846.*” In *Humphries v. Cullingwood* (a) it was held that a notice at the foot of a bill of *Middlesex*, under the stat. 5 G. 2. c. 29., specifying the day and month when the defendant was to appear, was regular, though it wholly omitted to state the year, or the word “next.” So in *The Weaver’s Company v. Forrest* (b) the Court decided that a similar notice, under the same statute, was sufficient, when the notice required the defendant to appear at the return of the process, “being the 14th of *June*, without saying this instant, or expressing the year of our Lord, or of the King.” In *Steel v. Campbell* (c), the notice required the defendant to appear on the 20th day of *January 1808*, a year which had already passed by, but it was considered that he could not have been misled by the error, and therefore that the mistake was immaterial. In the present case it was impossible for the parties to have been misled; *Tudball v. The Town-clerk of Bristol* (d); *Barton v. Ashley* (e). As to the second objection, the churchwardens are *ex officio* overseers by the stat. 43 *Eliz.*, and the tenth section of the Registration Act directs the town-clerk to issue his precept to the overseers of every parish generally.

(a) 1 *Chit. Rep.* 384.(b) 2 *Stra.* 1232.(c) 1 *Taunt.* 424.(d) *Antè*, p. 7.(e) *Antè*, p. 307.

Then the 101st section provides that "the words 'overseers' or 'overseers of the poor' shall extend to and mean all persons who by virtue of any office or appointment shall execute the duties of overseers of the poor, by whatever name or title such persons may be called, and in whatsoever manner they may be appointed; and that all matters by this act directed to be done by the overseers of a parish or township may be lawfully done by the major part of such overseers; and that whenever any notice is by this act required to be given or sent to the overseers of any parish or township, it shall be sufficient if such notice shall be delivered to any one of such overseers, or shall be left at his place of abode, or at his office or other place for transacting parochial business." . Whatever, therefore, is done by the majority of the overseers, is done by the whole body, and service upon one of them is sufficient, for they are all overseers who "made out the list," within the meaning of the 17th and 101st sections.

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*Greenwood*, in reply. As to the last point, it is submitted that, taking the 13th and the 101st sections together, the service is only good when effected upon one of the overseers who signed the list. That is the meaning of the word "made," as used in the seventeenth section. [*Maule* J. It may be that part may sign, though all may make out the list.] The natural course of things would be that those only would sign the list who made it out. *Humphries v. Cullingwood* (a), and the other cases cited upon the first point, have no application, because the question is not whether a party

(a) 1 Chit. Rep. 384.

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can be misled, but whether there has been a sufficient compliance with the act of parliament. Upon this point, *Edsworth v. Farrer* (a) is in favour of the appellant.

WILDE C. J. This is a recent act of parliament, and, therefore, many of its clauses have not received a judicial interpretation; and considering the nature of the act and its peculiar objects, it may be difficult to draw analogies from the construction put upon other statutes for the purpose of elucidating it. Wherever the terms of any particular section of a statute are express, clear, and intelligible, we are not at liberty to create any doubt by a reference to the language of other sections in interpreting it; but where the meaning of the section is doubtful, we may be obliged to refer to analogies, and admit the argument arising from the convenience or inconvenience of a particular construction. Now, in the present case, although I may regret that the party objecting may have been misled, I do not feel at liberty to entertain considerations of inconvenience, because I have no difficulty in collecting from the language of the statute, that it was intended that the notices should be dated. What is meant by "dated"? It means, that the time should be fixed at which a particular act is done. Then is the year required to fix the date? I think it is, and though there are some forms given in which the necessity of stating the year as part of the date is more explicitly pointed out than in forms No. 10. and No. 11. in Schedule (B.), still each of the notices contained in the last-mentioned forms purports to be *dated*, and I consider the year to

(a) *Ante*, p. 517.

be an essential part of that date. If I am asked of what advantage dating is, I find that the legislature has directed that the notices shall be dated, and, therefore, I am not at liberty to inquire into the comparative advantage of the date being inserted, or the comparative inconvenience of its being omitted. I, therefore, am of opinion that these notices were defective, and consequently that the decision of the revising barristers was erroneous. With respect to the second objection, although our judgment upon the first will decide the appeal, still I think that if the Court entertains a strong opinion upon the remaining point, it is but right that that opinion should be expressed. The question turns upon the meaning to be given to those words in the seventeenth section of the stat. 6 *Vict. c. 18.*, which say that notice of objection shall be given to the overseers who shall have made out the list. It is contended that service upon a churchwarden of the parish who had not signed the list was bad, but I think my brother *Kinglake* has given an effectual answer to that objection. The several sections of the act which have been referred to, beginning with the tenth, are general in their terms, and apply to all those who fall within the description of overseers of the poor. The tenth section provides that the precept shall be directed to the overseers, as a body, and the thirteenth section, following out the general words of the previous clause, requires that "the overseers" shall make out a written list, and shall sign such list. Then the seventeenth section directs that the notice of objection shall be given "to the overseers who shall have made out the list in which the name of the person objected to shall have been inserted." Now, if I want to find out what is meant by the words "who

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shall have made out the list," I think I cannot fail to discover that meaning by a reference to the latter part of the 101st clause, which says, that "all matters by this act directed to be done by the overseers of a parish or township may be lawfully done by the major part of such overseers; and that whenever any notice is by this act required to be given or sent to the overseers of any parish or township, it shall be sufficient if such notice shall be delivered to any one of such overseers, or shall be left at his place of abode, or at his office or other place for transacting parochial business, or shall be sent by the post free of postage, or the postage thereof being first paid, addressed to the overseers of the particular parish or township, naming the parish or township, and the county, city, or borough respectively, to which the notice to be so sent may relate, without adding any place of abode of such overseers." It seems, then, to me that "the overseers who made out the list" are the overseers of the particular parish or township to which the notice so sent may relate, and that these words do not mean the particular overseers by whose aid, or by whose interposition, the list may have been framed. If the statute had meant the particular overseers actively engaged in preparing the list, I should have expected to find an exception engrafted upon that portion of the 101st section which treats of the notice given to the overseers. I am, therefore, of opinion that a notice given to any one of those overseers who are charged with the duty of making out the list is sufficient, although the list may bear the signatures of a majority of the overseers only; and that there is no distinction in point of law between that portion of the overseers who may have been more active in making out the list

than others, and the overseers as a body. I own, therefore, that I am strongly impressed with the opinion that the second objection is not valid.

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COLTMAN, J. I also am of opinion that the first objection raised before the revising barristers was well founded. The only argument which seems to me to have any weight on the other side of the question is, that in some of the forms which have been referred to the year is specified, and not left in blank, but I do not think that sufficient to overbalance the evident intention of the Legislature that the whole date should appear on the face of the notices. With regard to the second point, it is clear to me that there is no force in the objection. The act of parliament does not require that the notice shall be served upon the overseers who signed, but upon those who made out the list. If we look to the 101st section, we find that there is a sufficient compliance with the act if the notice be sent by the post, directed to the overseers generally, without reference to those who have signed the list; and, therefore, we should give no effect to that part of the clause if we held that, by the seventeenth section, it was intended to require that the notice should be served on one of the overseers by whom the list had been signed.

MAULE J. I also think that these notices of objection to the overseers and to the party objected to are insufficiently dated, and not in accordance with the forms contained in the schedule. The forms No. 10. and No. 11. Schedule (B.) have these words: "Dated this —— day of ——." The common understanding of that language would be "this day of some particular



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month, A.D. 1846." I do not think that the object of the act would be answered unless the day, month, and year, according to the Christian calendar, were inserted; for instance, any computation of time referring to *Jewish* or *Mahometan* chronology, or reckoning from the *French* Revolution, would not be sufficient. The act was meant for plain people, and any date inserted in the forms which it requires should be followed, must be such as they can understand. Unless the year be stated of which the month forms a part, the day and month are in no way particularised. It is said, however, that inasmuch as the year is inserted in some of the forms, and omitted in the forms now in question, the insertion of the year as part of the date is not necessary. That argument depends upon the assumption that parliament never leaves unsaid what it intends should be known; but every one is aware how common it is, even in acts of parliament, where precision of language is of great importance, and elegance of style of no importance whatever, to find two equivalent expressions used to convey the same meaning. It is quite clear to me, therefore, that in the forms No. 10. and No. 11. the year is required to be inserted as part of the date. In *Humphries v. Cullingwood* (a) the defendant was required to appear on the return day of the process; but that was not the *date* of the notice itself, and it referred, moreover, to a future time. When I say to a man "I shall expect you to pay me some money by *December*," I mean "by *December* next," not "some one *December* at your own choice in the course of centuries." But the notices of objection in the pre-

(a) 1 *Chit. Rep.* 384.

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sent case refer to a time past, and consequently *Humphries v. Cullingwood* (a) has no bearing upon the point under discussion. But then it is said that no other month than *August* 1846 can be meant. When, however, the act of parliament gives an objector only one month in which to object, it requires him to mention that month in his notice; because, although a person conversant with the provisions of the act knows that it is only during that month that the notice can be given, other persons may require the information. It is said that a party cannot be misled by the omission of the year in the date; but I think that inconvenience might happen if the year were left out. Suppose a person, having a good vote, were to be objected to year after year. He comes up the first year, and defends his vote before the revising barrister, and his name is retained. The next year, while he is from home, a notice of objection is served at his house; on his return he sees a paper lying on his table, undated as before, and, supposing it to be the old notice of objection, he neglects to attend before the barrister, and his name is struck off the list of voters. With respect to the other objection, it seems to me that the thirteenth section requires the overseers, that is, *all* the overseers, to make out the list of voters for their own parish, and to sign such list. Then, the seventeenth section directs that a notice of objection shall be given to the overseers who shall have made out the list. Now, who are these overseers? When the act says that the notice shall be given to the overseers of a particular parish, I think it means to distinguish them from the overseers of any

(a) 1 *Chit. Rep.* 384.

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other parish, and not one portion of the overseers from another. Then comes the 101st section, enacting, "that all matters by this act directed to be done by the overseers of a parish or township may be lawfully done by the major part of such overseers," and that wherever notice is required to be given to the overseers, it may be given to any one of them. Under sect. 19., therefore, the list is made, in the eye of the law, by all the overseers, and notice to one is notice to all, within the meaning of the seventeenth section.

WILLIAMS J. concurred.

Decision reversed.

November 16.

NORTON, Appellant, The Town-Clerk of  
SALISBURY, Respondent.

The day appointed for hearing registration appeals is the *first* day appointed for that purpose by the court, within the meaning of stat. 6 Vict. c. 18. s. 64, which requires ten days' notice at least to be given to the respondent of the appellant's intention to prosecute the appeal.

**T**HIS appeal having been called on in its turn, the respondent did not appear.

*Kinglake* Serjt., for the appellant, produced an affidavit to shew that due notice of the intention to prosecute the appeal had been served on the respondent ten days before the day appointed for the hearing. The notice was served on the 2d of *November*, and the first day fixed for hearing registration appeals was the 12th of

Where, therefore, the decision of the revising barrister was given on the 16th *October*, and the first day appointed for hearing appeals was the 12th *November*, and notice was given on the 2d *November* to the respondent of the intention to prosecute: *Held* (the respondent not appearing), that the appeal could not be heard, and that the court could not postpone the hearing, on the ground that there had not been reasonable time to give such notice.

*November.* The case had been signed by the barrister on the 16th of *October*. [*Wilde C. J.* How can we hear this appeal? The stat. 6 *Vict. c. 18. s. 64.* is express “that no appeal shall be heard by the Court in any case where the respondent shall not appear, unless the appellant shall prove that due notice of his intention to prosecute such appeal was given or sent to the respondent *ten days at least* before the day appointed for the hearing of such appeal.” “Ten days at least” means ten clear days.] The sixty-second section provides that, within the first four days of *Michaelmas* term, the appellant shall transmit to the master the case signed by the barrister, and also a notice of his intention to prosecute the appeal; and the practice has been, first to enter the appeal, and give the proper notice to the master, and then to serve the respondent with notice. *Three* days were appointed for hearing appeals, viz. the 12th, 16th, and 19th of *November*, and as the present appeal was not heard on the 12th of *November*, the present day is the day appointed for the hearing. [*Wilde C. J.* Every appeal is liable to be called on, in the order in which it is entered in the list, on the first day.] The appellant would have been in time, if the Court had not fixed upon so early a day as the 12th of *November*. It is submitted, therefore, that there has not been reasonable time to serve the notice, and, under these circumstances, the Court is empowered, by the proviso at the end of the sixty-fourth section, to postpone the hearing of the appeal. In *Newton v. The Overseers of Mobberley* (a) no notice at all had been given, the respondents having consented to waive it,

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(a) *Antè*, p. 335.

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and *Tindal* C. J. said (*a*), "We have no power to dispense with an affidavit of such notice having been given, although the respondents have waived it. Still, as the proviso enables the Court to postpone the hearing of the appeal, 'if it shall appear to them that there has not been reasonable time to give or send such notice;' and as it appears that the appellant has been lulled into security by the conduct of the respondents, I think the appeal may, under the circumstances, stand over till the next term. That delay will give the appellant ample time to serve the respondents with notice of his intention to prosecute the appeal."

WILDE C. J. I should be very glad if I could find a ground upon which we could postpone this appeal, so as admit of ten days' notice being given to the respondent; but it behoves the Court to conform to the enactments of the legislature, and I can see nothing in the case which would authorize us to grant the application. The affidavit proceeds upon the footing that due notice has been given, and therefore it states nothing to shew that there has not been reasonable time to serve such notice. It is singular that, in the sixty-second section of the act, no time is mentioned within which the appellant is required to give the respondent notice; it only directs that notice of the intention to prosecute the appeal shall be given to the Master within the first four days of *Michaelmas* term. This section seems intended to meet the case of an appeal in which the respondent appears. But, when the respondent does not appear, there is an express enactment that the Court shall not have power to hear the appeal, unless the appellant

(*a*) *Antè*, p. 336.

proves that he has given the respondent ten clear days' notice of his intention to prosecute it ; except in cases when it shall appear to the Court that there has not been reasonable time to serve such notice. In the case referred to, the Court acted upon the assumption that the time afforded had ceased to be reasonable in consequence of the conduct of the respondent ; and the Court, whether correctly or not, held that the circumstances there disclosed brought the case within the proviso of the sixty-fourth section, and gave them authority to extend the time for giving the notice. But there is no statement or suggestion here which would justify the Court in acting upon the proviso, and saying that there has not been a reasonable time allowed. The decision of the revising barrister was pronounced on the 16th *October*, and there was nothing to prevent the appellant then giving the respondent notice of his intention to prosecute the appeal. I think, therefore, that this appeal cannot be heard.

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COLTMAN J. I am of the same opinion. The words "ten days at least" have already received a judicial construction, and they have been held to mean days exclusive both of the day of giving notice and of the day upon which the act is to be done which is contemplated by the notice. Under the words, therefore, of the sixty-fourth section, I think the notice was given too late. Nor do I think that the words of the proviso help the appellant : there was abundant opportunity for the appellant to have given a notice in sufficient time.

MAULE J. I also think that ten days' notice has not been given to the respondent in this case. The notice

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was given on the 2nd *November*, and the day appointed for hearing the appeals was *November* 12th. When a notice of "ten days at least" is required, it has been decided that ten days should elapse between the day of giving the notice and the day for which the notice is given. The appellant should bestir himself, and give the notice as early as possible.

WILLIAMS J. concurred.

Appeal struck out (a).

*November* 19.

(a) ADEY, Appellant, and HILL, Respondent.

UPON this case being called on, the respondent did not appear. Notice of the appellant's intention to prosecute the appeal had not been served till the 2d *November*.

*Cockburn* applied for an adjournment of the hearing until the next term, in order that the appellant might give a fresh notice. He submitted that the decision in the principal case had come upon the parties by surprise.

WILDE C. J. The court have considered with great anxiety what is the true construction of this act of parliament, which it is their duty to carry into effect. By this act the House of Commons have parted with a very considerable portion of their constitutional power, and have delegated it to this Court; but at the same time they have thought fit to guard against any encroachment upon their authority. It would have been competent to the legislature to have given this Court a discretion in various particulars; but the sixty-fourth section, which is now under consideration, is precise and distinct in its terms. The decision of the revising barrister is made conclusive as to the right of voting, subject to an appeal, the hearing of which is made dependent upon certain conditions. One of the conditions imposed upon the appellant is, that he shall give ten days' notice to the respondent; and to make this the more emphatic, the section says "ten days *at least* before the day appointed for the hearing of such appeal." When the legislature gives, as I said before, for the first time, power to a court of law to decide conclusively on questions involving the elective franchise, that is a state of things which, above all others, binds the Court to act strictly within the limits assigned to its jurisdiction by the act of parliament. It is much more fitting, if the provisions of the statute

should be found too stringent, that it should be left to the legislature to relax them, than that those provisions should be enlarged by a decision of the Court. We are all of opinion that the words "ten days at least" in the act, mean ten days exclusively of the first and the last day; and that being our construction of the act of parliament, our duty is limited to seeing whether the appellant has performed the condition on which alone the right of appeal is given. We are of opinion that, on the plainest view of the matter, he has not so done. Whatever may be the consequences of this decision upon any future election, they must be of infinitely less importance than the assumption of a power which has not been bestowed upon the Court. Upon the ground, therefore, that the language of the act of parliament is distinct and precise, the Court must hold that no appellant can have his appeal heard in the absence of the respondent, unless he has given ten clear days' notice of his intention to prosecute the appeal — a condition with which the appellant in this case has not complied. The postponement of the hearing till next term would, it appears to us, have no effect. We could not say next term, that the day appointed for hearing the registration appeals was not *November 12th*. The matter would, therefore, remain just as it stands at present, unless the Court were to say that there had not been reasonable time to give the notice, which, in the absence of even any suggestion to that effect, would be inconsistent with judicial gravity, and wear the appearance of a subterfuge. The day for hearing the appeals has been appointed, the proper notice has not been given, and the consequence is, that the appeal in this case cannot be heard.

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Appeal struck out.

### PRING, Appellant, and ESTCOURT, Respondent.

*ARNOLD* moved to postpone the hearing of this appeal till next term. He produced an affidavit, stating that the decision of the revising barrister was given on the 16th *October*; that the attorney of the appellant had been taken ill in the last week of *October*, and had died on the 7th *November*; and that during his illness he had confided the further prosecution of the appeal to a parliamentary registration agent, to whom he did not state what notice was requisite to be given. The agent in question swore to his ignorance of what was the law with respect to giving this notice.

WILDE C. J. The statute did not contemplate a party deferring the notice so late as the last week of *October*, when there is time to give it before.

Appeal struck out.



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GROVER, Appellant, and BONTEMS, Respondent.

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An application on the behalf of the respondent for leave to deliver paper books does not dispense with proof of notice of the appellant's intention to prosecute the appeal; nor does the fact of counsel having been instructed to appear for the respondent amount to an appearance by him.

WHEN this appeal was called on, the respondent not appearing, the notice was found to be similarly defective with those in the preceding cases, not having been served on the respondent till the 2nd November.

*Welsby*, for the appellant, submitted that the Court might hear the appeal. He relied upon an affidavit, stating that an application had been made to the Court, on the behalf of the respondent, for leave to deliver paper books; which, he contended, amounted to a constructive appearance by him. [*Maule J.* There was no actual appearance; the case was not called on.] The affidavit stated also that on the 12th November the respondent's attorney informed the attorney for the appellant that he had instructed counsel to appear for the respondent.

*WILDE C. J.* The application to deliver paper books on the part of the respondent is not enough to dispense with proof of notice of the appellant's intention to prosecute the appeal. It is quite clear that the appellant was not thrown off his guard by what took place, because he has given a notice, though that notice is insufficient. We cannot enter, then, into a discussion of what may, and what may not, amount to a constructive appearance; since the respondent does not now appear, and the appellant has failed to give the proper notice, the appeal cannot be heard.

Appeal struck out.

November 19.

GALE, Appellant, and CHUBB, Respondent.

Before the passing of the Reform Act, the right of voting in the borough of *Malmesbury* was vested in the "capital burgesses" only. The corporation of

THIS was a consolidated appeal from the decision of *George Poulden, Esq.*, the revising barrister for the borough of *Malmesbury*.

Upon the revision of the list of capital burgesses, being freemen of the said borough, entitled to vote in the election of a member for the said borough, *Henry*

*M.* consists of four classes of burgesses; the first called "capital burgesses," the second, "assistant burgesses," the third, "landholders," and the fourth, "free burgesses or commoners;" burgesses of the fourth class being qualified for admission thereto (*inter alia*) in respect of birth. A vacancy in the third class is supplied from the fourth by seniority, and vacancies in the second and first classes are filled up from the third and second classes by election.

*P.*, prior to 1st March, 1831, had been admitted a "free burgess" in respect of birth, and was subsequently elected a "capital burgess." *Held*, that he was not disqualified by the proviso in the 32nd section of the Reform Act, as "elected otherwise than in respect of birth," birth having made him eligible into the first class of burgesses.

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*Gale* objected to the names of *Hercules Player* and seven other persons being retained on the said list. Service of the several notices of objection having been admitted, the facts of the case were admitted on both sides to be as follows: — The corporation of *Malmesbury* consists of four classes of burgesses or freemen. The first class is composed of an alderman and twelve other burgesses or freemen, called capital burgesses; the second class consists of twenty-four burgesses or freemen, called assistant burgesses; the third class comprises forty-eight burgesses or freemen, called landholders; and the fourth class consists of an indefinite number of burgesses or freemen, called free burgesses or commoners. All persons becoming members of the corporation are first admitted thereto as free burgesses or commoners, and so in the first instance become members of the fourth class, which is the lowest grade of freemen; and the qualification for a “free burgess or commoner” appears (so far as is material to the present case) to be as follows: — Every son of a free burgess or commoner in his own right, he being at the time of claiming admission of the age of twenty-one years, and married, and also a parishioner of one of the parishes within the borough, and likewise at the same time being an inhabitant householder in an entire tenement (and not an inmate) within the borough, is entitled to be admitted a free burgess or commoner of the borough.

No son of a free burgess born before his father shall have been admitted in court a free burgess, is entitled to be admitted a free burgess. Among the disqualifications and causes for rejection or removal are — not being at the time of admission, or at any time after admission ceasing to be, an inhabitant householder in an entire tenement, within one of the parishes within the borough.

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As vacancies occur in the first-named three classes, they are filled up from the fourth class, called free burgesses or commoners, in the following manner:— A vacancy in the third class is supplied by the senior free burgess or commoner, who thereupon becomes of right a landholder, without any election or appointment. When a vacancy happens in the second class, it is filled up by a member of the third class, by election, the electors being the capital burgesses and assistant burgesses, forming the first and second classes; and, in the event of a vacancy in the first class, an assistant burgess, or member of the second class, is elected to supply such vacancy by the remaining capital burgesses, or members of the first class. Before the passing of the Reform Act, 2 *W.* 4. c. 45., the right of electing two members of parliament for the borough of *Malmesbury* had long been exercised by the thirteen capital burgesses or freemen only. By that act, the borough of *Malmesbury* was put into Schedule B., and has returned only one member; and the electors have consisted of such of the capital burgesses as were admitted free burgesses by right of birth, and the ten-pound householders of *Malmesbury* and of the adjoining parishes. The electors for the borough number at present 330, of whom eight are on the register as capital burgesses; the remaining five of the thirteen capital burgesses were originally admitted freemen by right of marriage, but they have been omitted from the list of freemen by the town-clerk, in consequence of three persons, who were capital burgesses by right of marriage, having been some years ago objected to, and expunged by the revising barrister, on the ground that freemen by right of marriage were, by the thirty-second section of the Reform Act, precluded from voting. *Hercules Player*, the above-

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named person objected to, was duly admitted a free burgess or commoner on the 21st *June* 1808, by right of birth, having been a son of a free burgess, duly admitted before *Hercules Player* was born; and the said *Hercules Player* possessed all the other requisite qualifications to entitle him to become a member of the corporation. He afterwards became successively a landholder, an assistant burgess, and finally, on the 2nd *June*, 1834, was elected a capital burgess of the corporation. He has ever since his admission in 1808, been an inhabitant householder in an entire tenement (and not an inmate) within the old borough of *Malmesbury*, and has been duly registered as a freeman entitled to vote for a member of parliament for the borough ever since his election as a capital burgess. The objection made to *Hercules Player* being on the list of freemen was, that he was excluded by the thirty-second section of the Reform Act, because he was elected a capital burgess subsequent to the 1st of *March* 1831; and the title by which he claimed a right to vote accrued since that period by election as a capital burgess, and not as a freeman by birth; and that, in fact, all the capital burgesses, previous to the passing of the Reform Act, voted not by right of birth, or of servitude, or of marriage, but as elected capital burgesses. On the other hand, it was contended, that, as the original right of *Hercules Player* to admission as a burgess or freeman was in respect of birth, and that right was the foundation of every subsequent advancement in the borough, until his right to vote as a capital burgess became matured under the law as it stood before the passing of the Reform Act, he came within the provision of the thirty-second section of that act, which reserves the right to vote in favour of a person thereafter elected, made, or

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admitted a burgess or freeman in respect of birth ; and that the case was entirely free from the mischief intended to be guarded against by the act, of inundating the constituency, the number of voters in *Malmesbury* being limited to thirteen : and it was urged, that the effect of a decision to the contrary would be, to disfranchise all the capital burgesses, and leave the corporation unrepresented. Upon these facts, the revising barrister decided that *Hercules Player* was a person entitled to vote as a burgess and freeman, elected and admitted in respect of birth ; and retained his name upon the list of freemen. The question for the opinion of the Court was, whether, under the circumstances mentioned in the above statement of facts, the said *Hercules Player* was a person entitled to vote as a burgess and freeman admitted in respect of birth. If the Court should be of that opinion, then the list was to stand without amendment : if the Court should be of a contrary opinion, then the names of *Hercules Player* and the seven other persons were to be expunged from the said list.

*Cockburn* for the appellant. The question is, whether *Player* was admitted a capital burgess in respect of birth : if otherwise, then, by virtue of the first proviso in the thirty-second section of the Reform Act, he had no right to be registered, because he was elected subsequently to the 1st of *March* 1831 (a). Now, a party

(a) Sect. 32. enacts, " That every person who would have been entitled to vote in the election of a member or members to serve in any future parliament, &c., either as a burgess or freeman, or, in the city of *London*, as a freeman and liveryman, if this act had not passed, shall be entitled to vote in such election, provided such person shall be duly registered according to the provisions hereinafter contained ; but that no such person shall be so registered in any year unless he shall, on the last day of *July* in such year, be qualified in such manner as would entitle him then to

cannot be said to be admitted a capital burgess by right of birth, when his election depends upon the will of the persons who choose him. [*Wilde C. J.* Then, as all the capital burgesses are subject to election, none of them have a right to vote.] That is so, where they have been admitted since the 1st of *March* 1831. [*Maule J.* If there is a tower of four stories in height, with only one staircase and one entrance at the bottom, and a person can only get in at the bottom by virtue of a right acquired by birth, surely this qualification is necessary to enable him to mount to the top floor.]

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*Arnold*, contra, was not called upon.

**WILDE C. J.** It is quite clear that it was the intention of the Reform Act to continue the rights of parties

vote if such day were the day of election, and this act had not been passed; nor unless, where he shall be a burgess or freeman, or freeman and liveryman of any city or borough, he shall have resided for six calendar months next previous to the last day of *July* in such year within such city or borough, or within seven statute miles from the place where the poll for such city or borough shall heretofore have been taken; nor unless, where he shall be a burgess or freeman of any place sharing in the election for any city or borough, he shall have resided for six calendar months next previous to the last day of *July* in such year within such respective place so sharing as aforesaid, or within seven statute miles of the place mentioned in conjunction with such respective place so sharing as aforesaid, and named in the second column of the Schedule marked (E. 2.), to this act annexed: Provided always, that no person who shall have been elected, made, or admitted a burgess or freeman since the 1st *March* 1831, otherwise than in respect of birth or servitude, or who shall hereafter be elected, made, or admitted a burgess or freeman otherwise than in respect of birth or servitude, shall be entitled to vote as such in any such election for any city or borough as aforesaid, or to be so registered as aforesaid: Provided also, that no person shall be so entitled as a burgess or freeman in respect of birth unless his right be originally derived from or through some person who was a burgess or freeman previously to the 1st *March* in the year 1831, or from or through some person who, since that time, shall have become, or shall hereafter become, a burgess or freeman in respect of servitude."

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situated like *Player*. When the act passed, he had an inchoate right to a vote, which was subsequently perfected by election. Being the son of a free burgess, he had been admitted into the class out of which he might eventually be admitted a capital burgess, and therefore he cannot be said to be a person elected a burgess "otherwise than in respect of birth," for it was by reason of his birth that he became eligible.

The other Judges concurred.

*Arnold* applied for costs, on the ground that one side only had been heard (*a*).

*Per Curiam*. That is not a peremptory rule; but in this case it does not appear to us that there is doubt enough to exempt the appellant from the payment of costs.

Decision affirmed, with costs (*b*).

(*a*) See *Allen v. House*, *antè*, p. 255.; *Walker v. Payne*, p. 324; *Croucher v. Browns*, p. 388.

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*Hilary Term*  
*January 25.*

(*b*) *Boothby* applied for a rule to rescind the order of the Court with respect to the payment of costs by the appellant. He referred to a return made by the late Lord Chief Justice *Tindal* to the House of Commons in 1845, relating to the costs of the appeals, and in which the learned Chief Justice stated that the Court had "acted on the principle, that where the subject-matter of the appeal presented a fair and reasonable ground of doubt as to the legal construction of the statute, and the propriety of the determination of the revising barrister, it was not in the intention of the legislature that costs should be awarded against the unsuccessful party." He submitted that a fair and reasonable ground of doubt must be looked at with reference to the appellant's state of mind, and relied upon an affidavit, from which it appeared that at the time of the revision the revising barrister himself expressed his readiness to decide the case either way, and leave the point to be settled by the Court of Common Pleas.

The Court said that this was substantially an application to vary a judgment which the Court had delivered, and therefore was one to which they could not listen.

Application refused.

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BUSHER, Appellant, and THOMPSON, Respondent. November. 19.

AT a Court held at Kendal, before John William Harden, Esq., the barrister appointed to revise the lists of voters for the county of Westmoreland, the claim of Thomas Busher to have his name inserted in the list of voters for the said county was objected to. The claim was as follows :

Christian Name and Surname of each Voter at full length.	Place of Abode.	Nature of Qualification.	Street, Lane, &c. where the Qualifying Property is situate.
Thomas Busher.	Highgate, Kendal.	One-third Share of burgage House and Garden.	Head of Captain French Lane.

A. was owner, with others, of tenements within the township, and the limits of the ancient borough, of Kendal. The tenements were held by burgage tenure, and by the custom of the borough were conveyed by deed, without livery of seisin, or inrolment; and when they were the wife's property, without any separate examination of the wife. The customs relating to the right of females to inherit, and to dower, were different from those prevailing at common law. No surrender or admittance was required, nor was any fine paid, upon descent or alienation.

The facts of the case were as follows :

Thomas Busher is one of the owners of certain houses situate within the township and within the limits of the ancient borough of Kirkby in Kendal. The houses are of what is called burgage tenure; and Thomas Busher's interest in the annual value of the said premises exceeds 40s., but is less than 10l. Besides the tenements held by burgage tenure, of which there are many, there are other tenements within the township which are of the

tradition, but no record, of courts baron or customary courts having been formerly held within the township; but the tenements were held subject only to the payment of fixed annual rents (some of which were payable to the lords of the manor, and others to private individuals), and no other service had been performed in respect of them. The owners of the tenements had voted for knights of the shire at four elections, as freeholders.

Held, that as A.'s interest in the tenements exceeded the annual value of forty shillings, and there was nothing to show that the freehold was in any body else, it must be presumed that his estate was of freehold tenure, and therefore, that he was entitled to vote for the county.



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ordinary tenure of free and common socage, and which are conveyed by the mode of assurance adapted to the passing of freehold estates, and descend according to the rules of common law. The burgage tenure within the township differs from the ordinary freehold tenure in this, that burgage tenements have always been conveyed by deed of grant, or bargain and sale, without livery of seisin, and without a lease for a year, or any inrolment; no surrender or admittance is, however, required, nor is any fine paid upon descent or alienation. There is no record of Courts baron or customary Courts having ever been held within the township, although a tradition exists that such Courts were formerly held, and that upon every change of tenant of a burgage-tenement a "God's penny" only was paid, but no fine. The mode of descent of such burgage-tenements follows the common law mode of descent, excepting that where by the common law several females would inherit as co-parceners, by the custom of burgage tenure the eldest inherits to the exclusion of the rest. The custom with regard to femmes covert has always been that husband and wife have conveyed the burgage-tenements of the wife by such deed of grant, or bargain and sale, as before mentioned, and without any separate examination of the wife; and that upon the death of a person dying seised of a burgage-tenement and leaving a widow, such widow, instead of dower by the common law, has had the whole of the burgage tenements of which her husband died seised, during her chaste viduity; but such widow has had no dower or free bench out of any tenements conveyed by the husband during coverture, her title to such dower or free bench being confined to the tenements or estate of which the husband died seised.

In the township of *Kirkland*, which adjoins the township of *Kendal*, but is without the limits of the ancient borough of *Kirkby-in-Kendal*, there are burgage tenements, the customs with respect to which both as to alienation, descent, and in all other respects, are the same as apply to burgage tenements in *Kendal*, except that upon alienation the deed of alienation is presented at the manor Court; but no admittance takes place. There are copyhold tenements within the manor of *Kirkland*. Burgage tenements have always been devisable in the same way as ordinary freehold estates. They are held subject only to the payment of certain fixed annual rents, some of which are payable to the lords of the manor, and others to private individuals, who have an undoubted right to enforce payment of these fixed annual rents by entry and distress: no other services have been performed or payments made in respect of the burgage tenements. The owners of these tenements voted in the election of knights of the shire for the county of *Westmoreland* in respect of these burgage tenements, at the elections in 1818, 1820, 1826, and 1832; but whether they did so in the exercise of an admitted right, or by mutual consent, was not shewn. There are within the barony of *Kendal* (within which the borough of *Kirkby-in-Kendal* is situated) divers customary tenements which are conveyed by deed of grant, or bargain and sale, without surrender, but with regard to which upon every change of tenant by alienation, descent, or devise, as well as upon the death of the lord, admittance at the manor Court is necessary; and fines (some arbitrary, but for the most part certain) and in some instances heriots are payable. The owners of the customary tenements also perform suit and ser-

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vice at the customary Courts, which are regularly held within the several manors. In other respects the customs as to descent and as to a widow's estate in her deceased husband's lands, and as to the power of disposition by will are the same, both with regard to burgage tenements and to the customary tenements alluded to.

Upon the foregoing facts it was contended on behalf of *Thomas Busher*, that the houses were of freehold tenure, and that an interest to the extent of 40s. by the year was sufficient to support his claim. The revising barrister decided that the houses were not of freehold tenure, and that as their clear yearly value to *Thomas Busher* did not amount to 10l. they were insufficient to support his claim, which was thereupon rejected.

*Cockburn* (Stock with him) for the appellant. The question is, whether this estate is of freehold or customary tenure. The law on this subject is laid down in *Heywood on County Elections* (a). There is a wide distinction between estates of freehold, where the party seised may dispose of his estate as he pleases, and estates of a base tenure, where the party holds at the will of the lord according to the custom of the manor, and the intervention of the lord is necessary to effectuate the alienation of the estate. [*Maule J.* The peculiarity of this tenure seems to be, that these lands pass without livery of seisin; and the question is, whether there can be a valid custom to pass lands without livery.] Lord *Coke*, in 1 *Inst.* ss. 165, 166, 167, refers to various customs which obtain in burgage

(a) 2d ed. c. 3. pp. 69. et seq.

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tenures, differing in many essential respects from the common law; as the custom of gavelkind and borough English; the right of the widow to dower in a moiety, or the whole, of her husband's lands, *dum sola et casta vixerit*; and a custom to devise lands in fee simple, when lands and tenements were not devisable at the common law. It is clear from the facts of the case, as stated by the revising barrister, that here the tenure is of a freehold nature; for it is found that no record exists of courts baron or customary courts having ever been held within the township, and though the burgage tenements are held subject to the payment of fixed annual rents, there is nothing to shew that payment of rent is necessary in order to entitle the owners to vote. *Littleton* (*lib. 2. c. 10.*) says, that tenure in burgage is but tenure in socage; and speaking of socage (*lib. 2. c. 5.*) he thus expresses himself: "Tenure in socage is, where the tenant holdeth of his lord the tenancie by certeine service for all manner of services, so that the service be not knight's service. As where a man holdeth of his lord by fealty and certaine rent, for all manner of services." When he says "socage," he means free and common socage; and it must be assumed that these tenements are held in common socage, until the contrary be shewn.

*Arnold* for the repondent. The question for the decision of the Court will turn upon the construction of the nineteenth section of the Reform Act. That section enacts, "That every male person &c. who shall be seised at law or in equity of any lands or tenements of copyhold or any other tenure whatever except freehold, for his own life, or for the life of another, or

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for any lives whatsoever, or for any larger estate, of the clear yearly value of not less than 10*l.* &c., shall be entitled to vote in the election of a knight or knights of the shire" &c. The case finds that *Busher's* interest in these burgage tenements is of less than 10*l.* annual value, and therefore, if his estate be of any other tenure than freehold, he is not entitled to vote. The revising barrister has decided that the houses are not of freehold tenure; and it is for the appellant to satisfy the Court that the decision of the revising barrister was wrong. He must succeed upon the strength of his own title, like the plaintiff in ejectment. The definition of burgage tenure is given by *Littleton* §§ 162, 163.: "Tenure in burgage is, where an ancient burrough is, of which the king is lord, and they, that have tenements within the burrough, hold of the king their tenements; that every tenant for his tenement ought to pay a certain rent by yeare &c. And such tenure is but tenure in socage. And the same manner is, where another lord, spirituall or temporall, is lord of such a burrough, and the tenants of the tenements in such a burrough hold of their lord, to pay, each of them yearly, an annual rent." So *Blackstone*, in his *Commentaries* (vol. ii. p. 82.), describes it as "a kind of town socage; as common socage, by which other lands are holden, is usually of a rural nature. Tenure in burgage, therefore, or burgage tenure, is where houses, or lands which were formerly the site of houses, in an ancient borough, are held of some lord in common socage, by a certain established rent." In those cases the fee is in the tenant, subject only to the payment of rent; but here it is submitted that the tenants have not an estate of freehold. There are four pecu-

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liarities in the tenure described in the case ; first, the tenements may be conveyed by deed, without livery of seisin ; second, sisters do not take as coparceners, but the eldest sister inherits, to the exclusion of the rest ; third, husband and wife may convey the wife's tenements by deed, without any separate examination of the wife ; fourth, a widow, during her chaste viduity, takes as dower all the tenements of which her husband died seised, but has no dower out of any tenements conveyed by her husband during coverture. It may be conceded that the second and fourth of these incidents of the tenure in question are not inconsistent with a freehold estate ; but, on the other hand, they are not inconsistent with an estate of copyhold tenure ; 2 *Watk. Cop. (a)* pp. 52. 73. ; App. III. p. 477. Moreover, the first and third of these customs are quite incompatible with a freehold tenure. There is no mode by which freehold estates can be alienated *inter vivos* at common law, except by feoffment and livery of seisin ; 1 *Steph. New Comm.* 218. ; 2 *Black. Comm.* 311. A deed of grant, without livery of seisin, would be inoperative to pass the freehold at common law, and therefore one custom prevails quite inconsistent with an estate of a freehold nature. The other form of alienation is by bargain and sale. Now, before the Statute of Uses, a bargain and sale at common law would not have passed the freehold. [*Maule J.* The question is, whether there may not be a good custom to pass a freehold estate in any other way than by livery of seisin.] The revising barrister does not say that there is any such custom, and he has decided that the tenements are not

(a) 4th ed.

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held by a freehold tenure. The same observation applies to the third peculiar incident of this species of burgage tenure. A custom, by which the wife's property may pass by deed of bargain and sale, without any separate examination of the wife, is inconsistent with freehold tenure; *Perkins*, § 154. In *Roe d. Clemett v. Briggs* (a), which was an action of ejectment for a mesuage with the appurtenants in *Kirkland*, in the parish of *Kendal*, the marginal note of the report runs thus: "Devise of testator's burgage house (being burgage held of a manor where there is no custom of entailing) to his wife for life, or until marriage, and after her decease or marriage to *R. C.*, his younger son, for and during the term of his natural life; and after the decease or marriage of his wife, and also after the decease of his son *R. C.*, unto *the heirs of the body of R. C.* lawfully begotten or to be begotten, *equally amongst them as shall then be living*, share and share alike (there being not any child of *R. C.* then born), and in case *R. C.* die without issue, lawfully begotten or to be begotten, after his decease remainder over: Held, that *R. C.* took either an estate of inheritance in the nature of an estate-tail, or an estate for life, with a contingent remainder to his children, depending on the event of there being a child born and living at the death of *R. C.*; and that, in either case, the child of *R. C.* was barred, by the freehold of the lord becoming united, by a deed of enfranchisement, in the owner of the customary estate, who derived title by conveyance from *R. C.* after his estate came into possession." The special case on which the opinion of the Court was sought, stated that the cus-

(a) 16 *East*, 406.

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tomary mode of conveyance of such burgage-tenements was by grant, without any lease for a year, livery of seisin, or inrolment, which is just the present case. Lord *Ellenborough* C. J. in delivering the judgment of the Court, says (a), "And this brings me to the second question, whether, considering this as a contingent remainder to the children of *Richard Clemett* who should be living at the time of his death, there was a sufficient freehold in the lord to support it; this being a customary estate, where the freehold is in the lord." He then goes on to say (b), "By the enfranchisement, the estate became severed from the manor; and though the person, to whom the enfranchisement is made, have only a particular estate in the premises, and he take a conveyance of the freehold in fee, it shall be an absolute enfranchisement; the copyhold tenure shall be extinct for ever, and the enfranchisement shall enure for the benefit of those in remainder; that is, their estate shall cease to be held of the manor, and shall become of freehold tenure. After the enfranchisement, the premises being severed from the manor, and the tenure changed, all customs, and all rights, and privileges, which before attached to their customary tenure, cease with respect to them." It is submitted, therefore, that burgage-tenements with peculiar customs like those stated in the present case, cannot become freehold without enfranchisement. [*Maule* J. It may be that within the borough, there has been a custom for alienation to take place *invito domino*, while in the rest of the manor not within the borough his concurrence was necessary.] In *Doe d. Reay* v.

(a) 16 *East*, 413.(b) 16 *East*, 415.



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(a) 4 *East*, 271. 288.(b) 3 *Burr.* 1273.(c) 3 *Box. & Pull.* 378.(d) 4 *East*, 271.(e) 16 *East*, 406.

according to the custom of the manor. *Wilde C. J.*  
The difficulty here is, that there is an entire absence of  
all evidence of a base fee, and of a person, other than  
the tenant, to whom the freehold can be referred.]

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*Cockburn* in reply. The fact that these burgage-tenements are conveyed independently of the will of the lord shews that they cannot be customary estates. No court has ever been held within the township of *Kendal*, which leads to the inference that there has been at some time or other an enfranchisement of the borough. The fair presumption is, that the freehold is in the tenant who is in possession.

*WILDE C. J.* In this case the sole question seems to be, whether the interest of the party claiming to vote was or was not of a freehold nature. The property is of value sufficient to entitle him to vote, if the tenure be freehold, but if it be of any other tenure, the value is insufficient. By the case it is found that the party claiming to vote is the owner of these burgage-tenements, subject only to the payment of a certain rent, the amount of which is not stated; and with regard to the tenements, they seem to be in a district where there is no manor and no lord. All that can be said, therefore, with respect to the payment of rent is, that the rent is payable to some individual or other. Now, when a party holds premises, subject only to the payment of rent, what is the legal presumption as to the nature of his interest therein? and what is there shewn in the present case to cut down that interest? If we regard the mode of enjoyment, we find all the incidents which usually attach to estates of freehold tenure. There

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is an entire absence of any incident of base tenure, and of any circumstance which shews that any person but the owner is entitled to the freehold. It is found, also, that in point of fact these parties have voted at several elections as freeholders, though it is said that it is not known whether that was done by consent or not. As a matter of reputation, therefore, in the neighbourhood, it must have been considered that they were entitled to the freehold. Now, what is there in this case to shew that this party's estate was not of freehold tenure? The only arguments relied upon for the purpose of cutting down the estate relate to the mode of conveyance, which is by deed without livery of seisin, and without any separate examination of the wife, when the wife's property is conveyed. But, in the absence of any circumstances tending to reduce the interest below a freehold, I apprehend it would be competent to a court to give effect to such a conveyance. It is found that this mode of conveyance has existed from time immemorial; there is no evidence that there ever was a manor or a lord, and there is evidence that there is no manor and no lord of the manor now. When, therefore, it is argued that the tenant in possession is not seised of a freehold estate, we should naturally require to be told where the freehold is. I am not aware of any case, where the interest of a party has been cut down, in which you could not name the person in whom the freehold was vested. In the absence, therefore, of all base service, of a manor, of a lord, and of any other person holding a relation to the land to whom I can refer its free tenure, I may well infer a local custom making the conveyance good, although not in accordance with the common law. I find this custom has prevailed for an

indefinite period, and although many of the incidents, perhaps all, which attach to the burgage tenure in this case, may be found in cases where parties have held estates less than freehold, these cases will not be found unaccompanied by other circumstances, shewing that the estates were of base tenure. It is not enough, therefore, to say that all the incidents of this burgage tenure may be found in cases where it has been held that the tenure was not freehold, unless you find the presence of other circumstances tending to reduce the owner's interest. I think, therefore, that the decision of the revising barrister ought to be reversed, and the name of the party placed upon the list.

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COLTMAN J. I also think that the decision of the revising barrister was erroneous. Where a man is found in possession of landed property, *primâ facie* he is seised of the fee, and the party who seeks to cut that estate down must shew good reasons for doing so. With regard to the rent, it is not shewn to be payable to any person holding a public situation, to whom, as the owner of the freehold, rent would be likely to be paid, such as the lord of the manor. The grant may have been made by the ancestor of the lord of the manor, before the statute of *Quia Emptores* (a). The only circumstance which raises any difficulty relates to the mode in which these burgage-tenements have been conveyed. Now, that in the city of *London*, houses and other tenements may pass by bargain and sale, without livery of seisin, has been explicitly and distinctly decided. Lord *Coke*, in 2 *Inst.* (b) says, "Resolved by the opinion of the justices of both benches,

(a) 18 *Edw.* 1.

(b) P. 675.

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that a bargain and sale for valuable consideration of houses or lands in *London* &c. by word only, is sufficient to pass the same; for that houses and lands in any city &c. (wherein the mayor &c. have authority to inrol) are exempted out of this act (27 *Hen.* 8. c. 16.), and at the common law such a bargain and sale by word only raised an use, and the stat. 27 *Hen.* 8. c. 10. doth transfer the use into possession;" and it is then stated that there is no provision for inrolment within such cities, boroughs, &c. A conveyance, therefore, by bargain and sale, without livery, was perfectly good within the city of *London*, or any other ancient borough. I should be very much disposed to believe that *Kendal* was one of these ancient boroughs, were it not for the fact stated in the case that these burgage-tenements have always been conveyed by deed, without any inrolment. If a question were to arise as to the validity of such a conveyance, I might, therefore, have some doubt; but we are not trying that question here, but whether the party who is in possession has an estate of freehold; and I think the revising barrister was wrong in deciding that he had not.

MAULE J. I also think it is to be presumed, there being nothing to rebut the presumption, that there was in this case a sufficient enjoyment of land of a freehold nature, to confer the right of voting. The question raised does not so much relate to the value of the interest, which, if freehold, is admitted to be sufficient, as to the practice of making conveyances within the borough. It may, however, be, that there has never been any conveyance at all of the burgage-tenements in question; they may have descended from ancestor to

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heir from time immemorial, which is a common circumstance in that part of the country in which *Kendal* is situate. The only question, therefore, is, whether at the court of revision the estate was shown to be of any tenure other than freehold. If so, it must be because there was some other person in existence from whom the party held the land, as of base tenure. There is always some badge or symbol of baseness in cases where land has been held by a base tenure, and although the substance of the baseness may have now disappeared, its existence may still be shewn by a very distinct shadow which has been left behind. Here, however, there is nothing of the kind; and if it be contended that the party in possession has not the freehold, we must say that the freehold is in some person whose existence is not suggested. The case finds that these burgage-tenements are subject to the payment of certain rents, which is one of the ordinary incidents of socage tenure. It finds, also, that these payments are in some cases made to the lord of the manor, and in others to private individuals. There is nothing to show that the payments in the present case were made to the lord of the manor, and therefore they must be taken to have been made to private individuals. It seems to me, that these tenements must have been granted away by some individual, the ancestor of those persons who now receive the rents, before the statute of *Quia Emptores* (a) passed; and the estate thus granted would be of free, and not of base tenure. There is nothing, therefore, in the payment of rent to shew that the tenure was not freehold; and I do not see why there may not be a

(a) 18 *Edw.* 1.

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good custom within the borough to pass tenements by grant, without livery of seisin. The notoriety of the transfer, which was the object aimed at in requiring livery of seisin to accompany a feoffment, might be thought to be sufficiently provided for by the occupation of a tenement in a borough. But it may be, that this custom is not a good custom. What, however, is wanted is affirmative evidence to shew that these tenements were held by a base tenure. I, therefore, think the barrister was wrong.

WILLIAMS J. I am of the same opinion. Perhaps, there may be some difficulty in seeing how the custom operated to pass the estate by the mode of conveyance in question; but I confess I do not understand how that difficulty can be removed by saying that the estate is of base tenure.

Decision reversed.

November 19.

NICKS, Appellant, and FIELD, Respondent.

Before the Reform Act, the right of voting in the borough of Warwick, was in inhabitants

**T**HIS was a consolidated appeal from the decision of *John Dick Burnaby, Esq.*, the revising barrister for the borough of *Warwick*.

paying scot and lot. Every inhabitant who had been duly rated for six calendar months next before an election, and had paid all rates due from him before the actual giving of his vote, was entitled to vote as such scot and lot voter.

A scot and lot voter, who had been on the register every year since the Reform Act, with the exception of 1845, and who had always resided within the borough, and been rated in respect of a house therein, paid all the rates due from him on the 31st July 1846. *Held*, that although his right to be registered had been suspended, his qualification as an elector according to the usages of the borough continued; and consequently that the omission of his name from the register for one year did not destroy the right reserved to him by stat. 2 Will. 4. c. 45. s. 33.

*William Bradley* claimed to have his name inserted in the list of voters for the said borough, as an inhabitant paying scot and lot. It was proved, that, before and upon the 7th *June* 1832, the right of voting in the election of members of parliament within the said borough, according to the usages and customs thereof, was in the inhabitants paying scot and lot; and that every person who had been duly rated for six calendar months next before an election, and had paid all rates due from him before the actual giving of his vote, was entitled to vote as such scot and lot voter. It was further proved, that the said *William Bradley* had been upon the register of voters for the said borough every year as a scot and lot voter, with the exception of the register made in the year 1845, when his name was expunged, in consequence of his rates due on 31st *July* 1845, remaining unpaid, and no tender thereof having been made. It was further proved that the said *William Bradley* had paid all rates due from him on 31st *July* 1846, including those which had before been unpaid as aforesaid; and it was also proved that the said *William Bradley* had always resided within the said borough, and had occupied a house, and been rated in respect of it. It was objected, that the said *William Bradley*, having been expunged from the register of voters as aforesaid, for the cause aforesaid, for the space of one year, was not entitled to have his name inserted in the register to be made in 1846. The revising barrister inserted the name of the said *William Bradley*, subject to the opinion of the Court of Common Pleas as to the correctness of such insertion.

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*Hayes* for the appellant. The question, in this case turns upon the construction of the provisoes in the



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thirty-third section of the Reform Act, which enacts, “that no person shall be entitled to vote in the election of a member or members to serve in any future parliament for any city or borough, save and except in respect of some right conferred by this act, or as a burgess or freeman, or as a freeman and liveryman, or, in the case of a city or town being a county in itself, as a freeholder or burgage tenant as herein-before mentioned: Provided always, that every person now having a right to vote in the election for any city or borough (except, &c.), in virtue of any other qualification than as a burgess or freeman, &c., as herein-before mentioned, shall retain such right of voting so long as he shall be qualified as an elector, according to the usages and customs of such city or borough, or any law now in force; and such person shall be entitled to vote in the election of a member or members to serve in any future parliament for such city or borough, if duly registered according to the provisions herein-after contained; but that no such person shall be so registered in any year, unless he shall, on the last day of *July* in such year, be qualified as such elector in such manner as would entitle him then to vote, if such day were the day of election, and this act had not been passed; nor unless such person, where his qualification shall be in any city or borough, shall have resided for six calendar months next previous to the last day of *July* in such year within such city or borough, or within seven statute miles from the place where the poll for such city or borough shall heretofore have been taken; nor unless such person, where his qualification shall be within any place sharing in the election for any city or borough, shall have resided for six calendar months next previous to the last day of

*July* in such year within such respective place so sharing as aforesaid, or within seven statute miles of the place mentioned in conjunction with such respective place so sharing as aforesaid, &c. : Provided nevertheless, that every such person shall for ever cease to enjoy such right of voting for any such city or borough as aforesaid, if his name shall have been omitted for two successive years from the register of such voters for such city or borough herein-after directed to be made, unless he shall have been so omitted in consequence of his having received parochial relief within twelve calendar months next previous to the last day of *July* in any year, or in consequence of his absence in the naval or military service of his Majesty." The words in the first proviso are that the party "shall retain such right of voting *so long as* he shall be qualified as an elector according to the usages and customs" of the borough. It then goes on to state, that no such person shall be registered, unless he be qualified as such elector on the last day of *July*, making the 31st of *July*, for all purposes, the day on which the validity of his qualification is to be tested. *Jeffrey v. Kitchener* (a) shows that where a person claims to vote in respect of any of the rights reserved by the thirty-third section, his qualification must be continuous; and any break in the continuity, for however short a time, destroys the qualification altogether. Now, here the right of voting, before the 7th of *June* 1832, was in the inhabitants paying scot and lot, and *Bradley* lost that right in 1845, his name having been then expunged from the register in consequence of the non-payment of his rates. According to the old

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(a) *Antè*, p. 210.

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law he might have regained his right by paying the rates due from him, but he cannot do so under the provisions of the thirty-third section of the Reform Act, one of the chief objects of which was to prevent the creation of occasional voters. [*Wilde C. J.* Has there been any thing more than a suspension of the right? If the Reform Act had not passed, his inability to vote on the last day of *July*, 1845, would not have disqualified him from voting in 1846. *Maule J.* The 31st of *July* is not to be taken as the day of election for all purposes, but as the day on which the party's title to be placed on the register must be complete.] It is submitted that by the payment of rates subsequently, the party would have gained a *new* qualification, and not the identical qualification which he had before, which, in the construction of this section, the Court has already decided to be necessary. The concluding proviso makes clear the meaning of the whole section, which appears to be this: — that if a party is not registered, in respect of a reserved right, in any *one* year, upon the ground that he was not, on the last day of *July* in such year, entitled to be registered, his right of voting is gone for ever; and that the omission of his name from the register for two successive years, whether he be entitled to be registered or not, shall have the same effect, unless the omission be a consequence of his receipt of parochial relief, or absence on naval or military service.

*Mellor* for the respondent. The decision of the revising barrister was right, and that upon two grounds. In the first place, the section distinguishes between the right to vote, and the right to be registered, and this distinction was pointed out by the Court in *Jeffrey v.*

*Kitchener (a)*. It is there said by *Cresswell J.* — “A person might be qualified as an elector, yet not in *such* manner as would entitle him to vote on the last day of *July (b)*.” *Bradley* was only off the register for one year, and his qualification as a scot and lot voter was perfected in the following year by the payment of all rates which had become due from him up to the 31st of *July*, 1846. When the act means to work a disqualification it says so distinctly, and therefore provides that when a party has been off the register for two successive years, except under certain circumstances, he shall for ever cease to enjoy such right of voting. But, secondly, there is nothing in the statement of facts to shew that *Bradley* was not entitled to be registered on the last day of *July*, 1845. His rates then due were unpaid, and he had made no tender of payment; but in order to disqualify a scot and lot voter, a demand and refusal of the rate is necessary; *Cullen v. Morris (c)*.

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*Hayes* replied.

WILDE C. J. It certainly would be a strange circumstance, that a man who has been supported at the expense of the parish within the twelvemonth ending on the last day of *July*, and whose name has therefore been omitted from the register, should not thereby permanently lose his right to vote, while the man who has not received parish relief, but has only been unable to contribute his quota to the parochial funds, should, in consequence of being omitted from the register for one year, become for ever disqualified from voting. Not-

(a) *Antè*, p. 210.(b) *Antè*, p. 218.(c) 2 *Stark. N. P. C.* 577.

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withstanding the able and ingenious argument of the learned counsel for the appellant, I own I cannot bring myself to entertain any doubt on this subject. In *Jeffrey v. Kitchener* (a) the distinction between the right of voting and the right to be registered is very clearly pointed out. The section says that the party "shall retain such right of voting so long as he shall be qualified as an elector according to the usages and customs of such city or borough;" and then it goes on to say, that he shall be entitled to vote in the election of a member &c., *if duly registered*; "but that no such person shall be so registered in any year unless he shall, on the last day of *July*, &c. be qualified as such elector in such manner as would entitle him then to vote, if such day were the day of election, and this act had not been passed." Now, it cannot be said that, according to the usages and customs of the borough, *Bradley* would not have been entitled to vote on the last day of *July*, 1846, if the Reform Act had not been passed. He had paid all rates due from him, and had therefore a complete right to vote as an inhabitant paying scot and lot. Let us see, then, whether the legislature has not taken care that a right of this description shall not be lightly destroyed. When the section says "that no such person shall be so registered in any year unless he shall, on the last day of *July*, &c., be qualified as such elector," &c., it does not appear to me to have any further effect than to suspend the party's right to be registered. The language of the act here marks very plainly the distinction between the right of voting and the right to be registered. And,

(a) *Antè*, p. 210.

when we find afterwards that the mere circumstance of being *off* the register is not treated as a discontinuance of the right of voting, although being *on* the register is regarded as an essential part of the qualification to vote, I cannot conceive that the want of a perfect title to vote, according to the usages and customs of the borough, on the last day of *July*, has any greater effect than to deprive the party of his right to be registered that year. In order to deprive the party permanently of his right to vote, his name must be off the register for two successive years, or it must be shewn that the right has been determined in some other mode, according to the customs and usages of the borough, and as if the Reform Act had not passed. I think the case of *Jeffrey v. Kitchener* (a) was rightly decided, but it does not seem to be in any degree analogous to the present. In that case, there was an interval of fourteen weeks, during which the party had no right to vote at all; and the right having once been lost, the Court held that it could not be regained. But in the present case it seems to me that there has been a continuation of the right to vote, because *Bradley* has always been an occupier, and has been rated; and according to the old law he might have paid his rates at any time before he polled at an election. It seems to me, therefore, that *Bradley* did not altogether lose his right to vote because his right to be registered was suspended. I think, also, that the case does not state any ground whatever for expunging the name of *Bradley* from the register in 1845. It merely finds that he had not paid or tendered the rates due from him on the last day of

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FIELD(a) *Ante*, p. 210.

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*July* in that year. Now, in *Cullen v. Morris* (a) it was determined, that before a scot and lot voter can be said to be in default, there must be a personal demand on him for payment, or a written demand left at his house. Quite independently, however, of the latter ground, I think the decision of the revising barrister was right.

COLTMAN J. It seems to me that to exclude a party from the privileges reserved to him by the thirty-third section, there must have been a period when, according to the usages and customs of the borough, he was disqualified from voting. In *Jeffrey v. Kitchener* (b) there was such a period; but what is there in this case to shew that *Bradley* had done any thing to disqualify himself from voting, according to the ancient usages of the borough, if the Reform Act had not passed? Under such circumstances, if he had paid his rates on the day of election, he would have been entitled to vote. The only penalty imposed on him by the thirty-third section for the non-payment of his rates due on the 31st of *July*, is the omission of his name from the register for the current year.

MAULE J. and WILLIAMS J. concurred.

Decision affirmed, with costs.

(a) 2 Stark. N. P. C. 577.

(b) Antè, p. 210.

# CASES

ARGUED AND DETERMINED

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IN THE

## COURT OF COMMON PLEAS

UNDER THE STAT. 6 VICT. c. 18.

IN

HILARY TERM,

IN THE

TENTH YEAR OF THE REIGN OF VICTORIA.

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ELLIOTT, Appellant, and The Overseers of St. *January 18.*  
MARY WITHIN, Respondents.

UPON a consolidated appeal from the decision of *Woronzow Greig, Esq.*, the revising barrister for the eastern division of the county of *Cumberland*, the following case was stated for the opinion of the Court: —

*St. Mary Within* is a parish containing the four divisions following, viz. *Abbey Street, Castle Street, Fisher Street, and Scotch Street*, which constitute the whole of the parish. These divisions are popularly, but improperly, called townships. They are not townships in

The parish of *St. M.* was divided into four districts, popularly, but improperly, called townships; one of the four overseers appointed for the parish at large undertaking, together with the assistant overseer, the exclusive management of one of these so-called townships. Each of such overseers respectively published a separate notice, requiring persons entitled to vote in respect of property situate within his so-called township to send in their claims to him and the assistant overseer. *Held*, that a notice of claim directed to and served upon "the overseers of the township of *S.*" was sufficient, service upon one overseer of *St. M.* being service upon all, and the description being one which must have been "commonly understood" to apply to the overseers of the parish in which such so-called township was situate.



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the legal sense of the term, as they do not separately maintain their own poor; nor are separate poor-rates made, nor separate overseers appointed for any of them; but four overseers, one selected from the inhabitants of each of the so-called townships, are appointed generally for the parish at large, which supports its own poor, and has poor-rates made for it. An assistant overseer is also appointed for the parish at large. In making out the list of voters for the borough of *Carlisle*, the four overseers have always prepared and published one list for the whole parish; but in making out the list of voters for the eastern division of the county of *Cumberland*, the overseers of the parish have never acted as such, but it has been the custom for each of the four overseers to undertake the exclusive management of such of the so-called townships from which he was so selected as aforesaid, and to hold himself out to the public as the overseer of such so-called township; consequently, four separate lists of voters for the eastern division of the county, in respect of property situate within these several so-called townships, each made out separately by a different overseer along with the assistant overseer, have been inserted in the register, instead of one list of voters, in respect of property situate within the parish at large. This year, the clerk of the peace, as usual, sent his precept, &c., under stat. 6 *Vict. c.* 18. s. 3., to the overseers of each of these so-called townships, and each of such overseers respectively published, under sect. 4., a separate notice, according to the Form 2. Sched. (A.), requiring persons entitled to vote in respect of property, situate within his so-called township to send in their claims to him and the assistant overseer, who in each case acted with the particular

overseer, so that one overseer and the assistant overseer always acted for each of the so-called townships. Each of the above-mentioned lists was signed by two persons only, namely, the particular overseer and the assistant overseer, who, after their signatures, designated themselves as overseers of the township of, &c. In consequence of these notices, numerous notices of claim were duly served upon the different overseers; but, in every case, the notice of claim was directed to and served upon the overseer of the township of, &c., according to the requirement of the first-mentioned notice. A separate list of claimants was prepared by each of the four overseers (the assistant overseer acting with each of them, as before) of all the persons who had sent in their claims as aforesaid. Each of such lists was headed 'The List of Persons claiming to Vote &c. in respect of Property situate &c. within the Township of' &c., and was signed by the particular overseer and the assistant overseers only, who designated themselves as the 'Overseers of the Township of' &c. The portion of the register in force for the parish of *St. Mary, Within*, sent by the clerk of the peace to the respective overseers as aforesaid, consisted of four separate lists, one for each of the four so-called townships above mentioned, each headed 'Township of' &c. Each of these last-mentioned lists or parts of the register was signed by the particular overseers and assistant overseer only, designated, as before mentioned, overseers of the so-called township. These different lists of voters so made out separately for each of the so-called townships, and each signed by two persons only, as above mentioned, were duly published together, and in immediate juxtaposition. The validity of these last-mentioned lists

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having been duly objected to, the revising barrister determined they were invalid, not having been duly signed by a majority of the overseers, as required by stat. 6 *Vict.* c. 18. ss. 5. 101., and, consequently, that the register of voters then in force for the parish of *St. Mary Within*, consisting of the above-mentioned four portions or list, one for each of the said so-called townships as above mentioned, should be taken to be the list of voters for the said parish for the year then next ensuing, under stat. 6 *Vict.* c. 18. s. 27. By virtue of the powers conferred upon him by sects. 27. and 40. of the said recited act, the revising barrister proceeded to correct the mistakes which were proved to him to have been made in such last-mentioned list of voters, by expunging from the headings of each of the above-mentioned four portions of such list the words 'Township of' &c., and directing that such four portions should be printed together in one alphabetical list, headed 'The Parish of *St. Mary Within*.' The revising barrister next proceeded, under the powers conferred by sects. 27. and 37. of the said recited act, to insert in the said last-mentioned list, so amended, the name of every person who, being omitted from the list of voters, proved to the satisfaction of such barrister, that he gave due notice of his claim to the overseers in manner hereinbefore mentioned, and that he was entitled on the last day of *July* 1846, to be inserted in the list of county voters for the parish of *St. Mary Within*. It was proved that *Alexander Annandale*, of *Polton*, near *Laswade*, *Edinburgh*, duly served in manner hereinbefore mentioned, on the overseers of the so-called township of *Scotch Street* before mentioned, a notice of claim to be placed on the list of voters for the eastern division of the county of *Cumber-*

*land*, in respect of property situate within the said so-called township; and that such notice of claim was addressed to the said so-called overseers of the township of *Scotch Street*, the parish of *St. Mary Within* not being mentioned in such last-mentioned notice. Under these circumstances, it was duly objected on the part of the appellant, that the said *Alexander Annandale* should not be inserted in the said last-mentioned list of voters, inasmuch, as his notice of claim was addressed to, and served upon the overseers of the so-called township of *Scotch Street*, officers who had no existence as such, instead of the overseers of the parish of *St. Mary Within*. This objection the revising barrister overruled, because the overseers who acted for the several so-called townships in manner above mentioned, had all been duly appointed overseers of the parish at large of *St. Mary Within*, which includes the whole of the so-called township; and, by virtue of that appointment, they severally and respectively acted as hereinbefore mentioned in the different divisions of the said parish so appropriated to each, by their own private agreement, and for their own convenience; and because they severally designated and ostensibly held themselves out to the public as the overseers of the so-called townships, for the purpose of making out the list of voters for the eastern division of the county; and thus they deceived the claimants, by assuming a title to which they had no right. Still, as they were the actual and legally appointed overseers of the parish of *St. Mary Within*, to whom notices of claim to vote in respect of property situate within such parish are, by sect. 7. of the above recited act, required to be given, and as they actually did duly receive the notice of claim of the said *Alexander Annandale*, the revising

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having been duly objected to, the revising terminated they were invalid, not having been by a majority of the overseers, as 6 *Vict. c. 18. ss. 5. 101.*, and, consequently, the register of voters then in force for the parish of St. Mary *Witheim*, consisting of the above-mentioned list, one for each of the said above mentioned, should be taken for the said parish for the year 1847, under stat. 6 *Vict. c. 18. s. 101.* conferred upon him by the recited act, the revising officer corrected the mistakes which had been made in such last-mentioned list from the headings and portions of such list, directing that the same be put together in one list for the parish of St. Mary *Witheim*, and proceeded, under the provisions of s. 101. of the said act, to amend the same, in this manner, to persons who were in the situation of the persons mentioned in the said list, it was made was not deemed to be being no such township as the parish of St. Mary *Witheim*. By inserting *Annandale's* name in the list of voters for the parish of St. Mary *Witheim*, the barrister in effect made an amendment in the list of claim, which he has no power to do under the fortieth section of the Registration Act. The barrister's powers of amendment under that section are very extensive; but still they are confined to the correction of mistakes "which shall be proved to him to have been made in any list;" and, moreover, the section expressly provides that no evidence shall be given of

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*Mellor* for the respondent. The notice of claim was served upon the right parties, though it was addressed to them by a wrong description. The revising barrister has held the service sufficient, and though the sufficiency of the service is one of the questions reserved by him for the opinion of the Court, the question is one of fact, and the Court will not review his decision upon it; *Hinton v. Hinton* (a). Then, as to the address.

(a) *Ante*, p. 259.

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barrister held, that the notice of claim of the said *Alexander Annandale*, and the service thereof, was sufficient, within the meaning of the 101st section of the said recited act; and inserted in the said amended list of voters for the parish of *St. Mary Within*, the name of the said *Alexander Annandale*, who had proved to the satisfaction of the revising barrister that he was on the 31st *July* entitled to be inserted in the list of voters for the said parish. If the Court of Common Bench shall be of opinion that the decision of the revising barrister upon the sufficiency of the above-mentioned notice of claim of the said *Alexander Annandale*, and the service thereof, is correct, then the name of the said *Alexander Annandale* is to be retained upon the said last-mentioned list of voters; but if the said Court shall be of a contrary opinion, the name of the said *Alexander Annandale* is to be expunged therefrom.

*Otter* for the appellant. The notice of claim in this case was not sufficient. It was addressed to persons who had no legal existence, and the situation of the property in respect of which it was made was not described at all; there being no such township as the township of *Scotch Street*. By inserting *Annandale's* name in the list of voters for the parish of *St. Mary Within*, the barrister in effect made an amendment in the notice of claim, which he has no power to do under the fortieth section of the Registration Act. The barrister's powers of amendment under that section are very extensive; but still they are confined to the correction of mistakes "which shall be proved to him to have been made *in any list*;" and, moreover, the section expressly provides that no evidence shall be given of

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any other qualification than that which is described in the claim. The provisions of the 101st section, under which the barrister thought himself at liberty to insert the name, do not apply, because there was no "misnomer or inaccurate description" within the meaning of that section. The service of the notice on the proper parties does not assist the respondent, because a notice of claim must be rightly directed as well as properly served. It was not addressed to the overseers of *St. Mary Within*, though it came to their hands. If a writ of *capias* were directed to the sheriff of *Middlesex*, and were delivered to the sheriff of *Kent*, for whom it was really intended, the sheriff of *Kent* would not be at liberty to execute the writ. [*Cresswell J.* Suppose the writ to the sheriff of *Kent* were inclosed in an envelope, directed to the sheriff of *Middlesex*, who receives the writ, and hands it over to the sheriff of *Kent*?] In *Hinton v. Hinton* (a) the Court held the revising barrister right in deciding that "*Nickless*" and "*Nicholas*" were commonly understood to mean the same person; but there the mistake was in the list of voters, not in a notice of claim.

*Mellor* for the respondent. The notice of claim was served upon the right parties, though it was addressed to them by a wrong description. The revising barrister has held the service sufficient, and though the sufficiency of the service is one of the questions reserved by him for the opinion of the Court, the question is one of fact, and the Court will not review his decision upon it; *Hinton v. Hinton* (a). Then, as to the address.

(a) *Antè*, p. 259.



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The 101st section enacts that the word "overseers" shall extend to all persons who by virtue of any office or appointment shall execute the duties of overseers of the poor, by whatever name or title such persons may be called. The notice of claim was directed to persons called overseers of the township of *Scotch Street*, but executing the duties of overseers of the poor of *St. Mary Within*. Being, then, in point of law, overseers of the parish of *St. Mary Within*, it was undoubtedly a misnomer to call them overseers of the township of *Scotch Street*; and therefore the only question which the barrister had to decide upon this part of the case, under the 101st section, was, whether these persons were so denominated in the notice "as to be commonly understood" to be the persons whose duty it was to relieve any of the poor of the parish of *St. Mary Within*. In *Edsworth v. Farrer* (a) *Maule* J. said: "I conceive that the words 'commonly understood' must be taken to apply to cases where the description given would, in its popular sense, convey precisely the same meaning as if the more accurate and legal description had been employed; as where a person describes a parish by some popular name."

*Otler* replied.

WILDE C. J. The question reserved for the decision of the Court in this case is, whether the notice of claim failed, by reason of its having been directed to and served upon the overseers of a so-called township, instead of the overseers of the parish generally; the notice being limited to certain persons whom the party

(a) *Antè*, p. 525.

thought fit to describe as the overseers of the township of *Scotch Street*. In point of fact, it seems there are no such overseers, and no such township. Now it is clear that the claimant in this case intended to give a notice of claim in accordance with the requisitions of the act of parliament; and if there be any defect in the notice, it has taken place in consequence of defective instructions on the part of the overseers of *St. Mary Within* with regard to the persons to whom notices of claim were to be addressed. It appears that although this parish is not divided in point of law into townships, it is in point of fact divided into districts, and the overseers of the whole parish have thought fit to apportion their labours, and each to devote his individual services to one district, passing popularly by the name of a township. Each of these individuals, therefore, having been appointed one of the overseers for the parish at large, takes under his particular charge a certain district, and, with the assistance and consent of the other overseers, he discharges a duty which is imposed upon them all. I think, therefore, that the overseers generally must be taken to have caused the notice to be given in the form and manner in which it was addressed, and that when the notice was accordingly directed to the overseers of a township, which had no legal existence, it was intended for the overseers of the whole parish, and was in point of law directed to them. The overseer who was called overseer of the township of *Scotch Street* was overseer of the whole parish, and consequently of every part of the parish. It certainly would be a matter of regret that a party should be deprived of his right to vote by reason of misdirections given by the authorities of a parish, from whom he

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might expect to receive proper instructions : at the same time, if it were found that there had been a failure in compliance with the provisions of the act of parliament, we could not say that he was entitled to vote. Upon the best construction, however, which I can give to the act, it appears to me that though the claimant has limited the direction of his notice to the overseers of a township, yet, as it was served upon one of the overseers of the parish, service upon one is good service upon all. That being so, the provisions of the 101st section, which was intended to remedy mistakes and inaccuracies of description, come in aid ; and the barrister, upon looking at this notice, and finding that there were no overseers of the township of *Scotch Street* but such as were overseers of the whole parish, was, I think, justified in holding that the notice of claim was addressed to the overseers of *St. Mary Within*. With respect to the description of the locality of the property, no point properly arises in this case, and therefore I confine my attention to the address and service of the notice ; but it is to be observed that if the revising barrister had not thought the description sufficient, it would have been his duty to have struck the party's name out of the list ; which he has not done.

CRESSWELL J. (a) I think the decision of the revising barrister ought to be affirmed. It appears that the overseers were appointed for the whole parish, and not for any particular district, although their practice was in certain matters to act separately, each for one district, with the aid of the assistant overseer. They

(a) Maule J. was absent.

are, therefore, overseers of the parish of *St. Mary Within*, and of every part of it; and you cannot by any misdescription make them otherwise. When, therefore, a party describes persons as overseers of a district which is within the parish, he necessarily means those who are overseers of the parish. The revising barrister, consequently, was quite at liberty to inquire, under the 101st section, whether the overseers were so denominated as to be commonly understood, and I think he came to a right conclusion.

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WILLIAMS J. I have felt some difficulty upon the form of this notice. It was directed to the overseers of the township of *Scotch Street*, when it should have been addressed to the overseers of *St. Mary Within*. That was clearly inaccurate; but I now understand that the revising barrister considered that a description of the overseers of the parish of *St. Mary Within*, as overseers of the township of *Scotch Street*, was in popular acceptance, and so as to be commonly understood, correct. I therefore think his decision was right.

Decision affirmed.

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January 25. · POWELL, Appellant, and PRICE, Respondent.

The appellant occupied a house and shop separated from each other by a yard, enclosed all round, save but for an open passage, communicating with the street. *Held*, that such house and shop were not within the same curtilage, and therefore could not be joined together so as to constitute one entire qualification, within the meaning of the 27th section of the Reform Act.

AT a Court held before *Henry Davison*, Esq., the barrister appointed to revise the lists of voters for the borough of *Brecon*, the following case was stated for the opinion of the Court.

The respondent duly objected to the name of the appellant being retained in the list of voters for the borough, on the ground that a shop, of which the appellant was owner and occupier, could not be joined with a house, bakehouse, and garden, of which he was also the owner and occupier, so as to constitute one entire qualification within the meaning of the statute 2 *W. 4. c. 45. s. 27.*; neither the last-mentioned premises without the shop, nor the shop without the last-mentioned premises, being of the clear yearly value of 10*l.*, but the said last-mentioned premises and shop together being of that value.

The shop in question fronts a street called *Mill Street*; the house, bakehouse, and garden in question are at the back of the shop, and are separated from it by a yard, in manner after mentioned.

The voter is a baker; the shop and bakehouse are used by him in his business, and the house is his dwelling-house. On its right, the shop is contiguous to a house also fronting the street, in the occupation of a *Mr. Watkins*, and is not the property of the voter. On its left, the shop is separated by a passage from the next house to it, fronting the street on that side. The last-mentioned house is the property of the voter, but

in the occupation of his tenant. At the farthest end of the passage from the street, and contiguous to, and at right angles with the last-mentioned house, is another house, also the property of the voter, but in the occupation of another tenant of the voter. This house is contiguous to, and in the same line with, the house and bakehouse which constitute part of the voter's alleged qualification. Nearly at the farthest end of this passage from the street, to the left hand on passing from the street, and at right angles with the passage, is the yard before mentioned. This yard lies between the fronts of the voter's house and bakehouse, on the one hand, and the back of the voter's shop and Mr. *Watkins's* house on the other. The passage and the yard are the property of the voter. The voter's tenant who occupies the house contiguous to that of the voter is the only person who has a right of way along the passage, and the voter has the exclusive use of the yard. The passage is five feet wide, and the yard is eight feet wide. The shop has a front door opening to the street, and a back door opening to the yard. The voter's house and bakehouse have front doors opening to the yard. The front door of the voter's house is opposite to the back door of his shop. The voter passes from his house and bakehouse to his shop by crossing the yard, and without going either into the street or the passage. The shop is not contiguous to the house and bakehouse, nor is it connected with them by any intermediate building, fence, or other matter than the soil of the said yard. There is a connection between the bakehouse and Mr. *Watkins's* house by means of a doorway, which runs across the yard, and is let into the bakehouse on the one hand, and Mr. *Watkins's* house on the other. This

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doorway leads to the piggery, garden, and other conveniences in the occupation of the voter. The revising barrister decided that the shop could not be joined with the other premises in the occupation of the voter so as to constitute one entire qualification, and the appellant's name was accordingly expunged from the list of voters.

*Kinglake*, Serjt. (January 18th), for the appellant. The question is, whether the shop which is occupied by the voter is to be considered as part and parcel of his dwelling-house, in which case the value of the premises would be sufficient, within the meaning of stat. 2 W. 4. c. 45. s. 27. It must be conceded that, since the case of *Dewhurst v. Fielden* (a), a claimant cannot join together two separate buildings, in order to make up the value required to confer a vote for a borough; but it is submitted that, in the present case, the shop is within the curtilage of the dwelling-house, and consequently forms part of it. The cases decided with reference to the offence of burglary throw much light upon this point. In *Russell on Crimes* (b), the general doctrine is thus stated: "The mansion or dwelling-house, in which burglary might be committed, was formerly held to include the outhouses, such as warehouses, barns, stables, cowhouses or dairy-houses, though not under the same roof, or joining contiguous to the dwelling-house, provided they were *parcel* thereof. And any outhouse within the curtilage, or same common fence, as the mansion itself, was considered to be parcel of the mansion, upon the ground that the capital house protected and privileged all its branches and appurte-

(a) *Antè*, p. 274.

(b) 3d ed. p. 798.

nants, if within the curtilage or homestall." The law in this respect has since been altered by stat. 7 & 8 G. 4. c. 29. s. 13., but the principles upon which the common-law doctrine, which is still applicable in civil cases, was based, are illustrated by *Rex v. Hancock* (a); *Rex v. Chalking* (b); *Rex v. Clayburn* (c); *Rex v. Westwood* (d); *Rex v. Walters* (e).

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*Peacock* for the respondent. None of the cases cited on the other side apply to the facts of the present. In each of those cases there was an entire enclosure all round; but the barrister here finds that the yard is open to the public street; and there is, therefore, no common fence. If the gate in a wall were left open by chance, the spot enclosed would still be a curtilage; but if there be no gate, as here, and nothing to prevent any one from walking into the yard, there can be no curtilage. The shop may be occupied as a distinct holding, and there is no difference between the present case and that of a person having a house on one side of the street and a shop on the other, which could not be joined so as to make up one qualification; *Dewhurst v. Fielden* (g).

*Kinglake*, Serjt., in reply, referred to *Taylor v. Clemson* (h).

*Cur. adv. vult.*

The judgment of the Court was now delivered by  
WILDE C. J. In this case it is stated, that the voter

(a) *Russ. & Ry. C. C.* 170.

(b) *Ib.* 334.

(c) *Ib.* 360.

(d) *Ib.* 495.

(e) *Ryan & Moo. C. C.* 13.

(g) *Antè*, p. 274.

(h) 2 *Q. B. Rep.* 978. 1036.



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claimed to be entitled to vote in respect of the occupation of certain premises, being of the value of 10*l.* a year, and which premises consisted of a dwelling-house, with an entrance open on one side to a certain yard, and a baker's shop fronting the street, which shop is on another side of the yard; and the question raised in this appeal is, whether the shop, which is essential in constituting the necessary value to give the claimant a title to vote, can be properly considered as part of the house. Now, the act of parliament which gives the right of voting in respect of the occupation of a house of 10*l.* annual value, without defining what shall or shall not be considered as a part of the messuage, necessarily leaves that question to be decided upon the general principles of law applicable to such a case; and the question in this case is, whether this shop, occupied by the appellant, can be considered as a part of the dwelling-house, within the meaning of the stat. 2 *W.* 4. c. 45. s. 27., by which the right to vote is given. The words of the section are, that "every male person, &c. who shall occupy, as owner or tenant, any house, warehouse, counting-house, shop, or other building," &c. shall be entitled to vote. There is nothing to enlarge the meaning attributed by the law to any of these words. The question, therefore, is, whether a shop is part of a house, within the legal meaning of the word "house." It may be considered as settled, that "by the grant of a messuage or house, the garden, orchard, and curtilage do pass;" (a) but there is no instance in the books where the word "house" has been held to pass not only the house, but a shop, situated with

(a) *Co. Litt.* 5 b.

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reference to it as the shop in this case is situated. It cannot be considered that this shop is within the curtilage, when there is no common fence which encloses it; and in the numerous cases of indictment for burglary, where the question has arisen as to what buildings are within the curtilage, that term has never been held to include buildings which were not within the same common fence as the house. If then, this shop cannot be considered part of the house, according to the legal meaning given to the word "house" in civil and in criminal cases, the Court can discover no principle on which they are entitled to give a more enlarged sense to it, within the meaning of this act of parliament. It is not disputed that two dwelling-houses, occupied by the same person, would not confer the franchise; why then should a house and shop? It would be strange if the owner and occupier of two dwelling-houses, not thereby entitled to vote, by converting one of the houses into a shop, should be capable of becoming qualified. It should be observed, that the yard is open to other persons, who have access to it at will, there being no fence between the yard and the street. On the whole the Court can find no circumstances in the case which can at all tend to shew that this shop would pass as part of the dwelling-house by any general words used in a conveyance, or would be part of such house for any civil or criminal purposes whatsoever. The result is, that the objection to the vote must be sustained.

Decision affirmed.

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January 25.

ALLEN, Appellant, and GREENSILL, Respondent.

The place of abode of a voter for a borough was described in the list made out by the overseers as "*Lower Mitton*," and his qualifying property to be an "office and wharf" in "*Lichfield Street*," which was situate in *Lower Mitton*. His true place of abode was not in *Lower Mitton*, but at *Hartlebury*, though he had formerly resided in *Lower Mitton*, but never in that part of it called *Lichfield Street*. A notice of objection, addressed to the voter at *Lower Mitton*, was left at the wharf in *Lichfield Street*. Held, that the service was insufficient.

THIS was an appeal from the decision of *Robert Bruce Chichester*, Esq., the revising barrister for the borough of *Bewdley*, who stated the following case : —

The respondent's name was inserted by the overseers in the list of persons entitled to vote in the election of a member for the borough of *Bewdley*, in respect of property occupied in the hamlet of *Lower Mitton*, as follows : —

Name.	Place of Abode.	Nature of Qualification.	Street, Lane, or other like Place, where the Property is situate.
Greensill, Edward.	Lower Mitton.	Office and wharf.	Lichfield Street.

At the Court held before the revising barrister for the said borough of *Bewdley*, the appellant, whose name was in the list of voters for the borough of *Bewdley*, objected to the name of the respondent being retained in the said list for the hamlet of *Lower Mitton*. It appeared that the respondent formerly had a house at *Lower Mitton*, in which he resided, but had left such house for several years, and at the time of the service of the notice of objection hereafter mentioned resided at *Hartlebury*, in this county, which is not within the said hamlet of *Lower Mitton*, and had never resided at the said office and wharf in *Lichfield Street*. A notice of objection, duly signed by the appellant, addressed to *Edward Greensill*, *Lower Mitton*, was left on the 25th *August* last at the said office and wharf in *Lichfield*

*Street* aforesaid. Under these circumstances, it was contended on behalf of the respondent, that the objector had not complied with the provisions of the seventeenth section of the stat. 6 *Vict. c. 18.*, the notice of objection not having been given to the respondent himself, nor left at his place of abode, as stated in the said list. On behalf of the appellant, it was contended, that as the respondent had not in fact any place of abode at *Lower Mitton*, as described in the said list, the qualifying property, which was there situate, must be deemed to be his place of abode, and that no other service could in this case have been effected, and that such service of the notice was therefore sufficient. The revising barrister decided that such notice had not been given or left at the place of abode of the respondent as stated in the said list, within the meaning of the seventeenth section of the said statute, and that the objector might in this case have complied with that section by sending a notice by post, addressed to the respondent at his place of abode as stated in the said list, or by serving such notice on him personally, and he accordingly retained the name of the respondent, and altered the description of his place of abode in the said list to *Hartlebury*. The respondent, on the revising barrister deciding that the notice of objection was not duly served, declined going into evidence in support of his qualification. The question for the opinion of the Court was, whether, under the circumstances mentioned in the above statement of facts, the said notice of objection was duly served on the respondent.

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*W. J. Alexander* for the appellant (*January 18.*). The service of the notice of objection was sufficient. The stat. 6 *Vict. c. 18. s. 17.* enacts "that every person ob-

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jecting shall give or cause to be left at the place of abode of the person objected to, *as stated in the said list*," meaning the list of voters, a notice of objection. The objector has followed the directions of the statute as nearly as the circumstances of the case would permit, by addressing the notice to the respondent at *Lower Mitton*, described in the list as his place of abode, and leaving it at the place where he was most likely to be found, namely, at the respondent's office and wharf in *Lichfield Street*, which is in *Lower Mitton*. [*Cresswell J.* If the objector had left the notice at the respondent's former place of abode at *Lower Mitton*, he would have brought himself within the words of the act.] The objector ought not to be prejudiced by a mistake of the overseer's, and by his having gone beyond the letter of the act in his anxiety that the notice should reach the hands of the party for whom it was intended. [*Wilde C. J.* Your argument amounts to this; that the statute having prescribed that the service should be effected in a particular way, you have done it better than was required by the act of parliament. If the notice had been sent by post, directed to the respondent at *Lower Mitton*, the presumption would have been that it duly reached the party objected to, because *Lower Mitton* was his place of abode as stated in the list of voters.] The provisions of the 100th section do not make it imperative upon the objector to send his notice by the post, though they leave him at liberty to do so. The question to be determined here is not whether *Lower Mitton* was the respondent's true place of abode, but whether it was his constructive place of abode, within the meaning of this act of parliament; and for all that appears in the case, *Lichfield Street*, being in *Lower Mitton*, must be taken to be his place of abode as stated in the list.

*Whitmore* for the respondent. An objector may serve his notice of objection in one of three modes; either personally, or by leaving it at the place of abode of the party objected to, or by transmitting it through the post. There is no ground for suggesting that *Lichfield Street* may be taken to be the respondent's place of abode, because the case finds that the respondent did at one time reside at *Lower Mitton*, but never did reside in *Lichfield Street*. The barrister has found, also, that the wharf and office in *Lichfield Street* was not the respondent's place of abode as described in the list; and this is a question of fact, on which the Court will not entertain an appeal; stat. 6 *Vict. c. 18. s. 65*. The service, therefore, of the notice was invalid.

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*Alexander* replied.

*Cur. adv. vult.*

WILDE C. J. now delivered judgment. The objection in this case was to the service of the notice of objection. It appears that a person named *Allen* objected to the vote of the respondent, and that he served the notice of objection at a certain wharf occupied by the party objected to. The case states distinctly that the wharf was not the residence of the respondent; and the seventeenth section of the stat. 6 *Vict. c. 18.* requires that every person objecting shall give or cause to be left at the place of abode of the person objected to, as stated in the list of voters, a notice of objection. The validity of the notice of objection in the present case, therefore, depends upon the fact whether it was served at the residence of the voter or not. It is admitted that the notice was not served at his actual place of residence; but it is said that it was served at a place

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which ought to be considered, for the special purposes of this act, as his place of abode. It appears from the case that *Lower Mitton*, the place described in the list of voters as the respondent's place of abode, was his place of abode at one time, but that it had ceased to be so for many years; the respondent, at the time of the service of the notice of objection, being in fact resident at *Hartlebury*. But it has been contended that, as the mistake in the statement of the respondent's place of abode in the list was the act of the overseers, that circumstance ought not to prejudice the objector, who had done all in his power to comply with the requisitions of the act of parliament. It is to be remembered, however, on the other hand, that the party claiming to vote has no control over the overseers in making out the list. The question, therefore, is whether, when the overseer, by mistake or from any other cause, describes in the list as a party's place of abode that which is not his place of abode, that can in any way affect the party who seeks to object to the vote. When the act of parliament comes to prescribe the duty of the objector, and requires him to serve his notice of objection in one of three different modes, I apprehend it is in the power of the objector to select which he pleases. If he chooses to select the particular mode of service which is described in the seventeenth section by the words "cause to be left at the place of abode of the person objected to," he must take care to see that the place at which he serves the notice is the party's place of abode; and he has no just ground for contending that the notice has been duly served there, because he can shew that the overseers have made a mistake, and have supposed that place to be the residence of the voter, when in fact it was not. He may always guard himself against the

effect of any such mistake by adopting either of the other two modes of service, namely, personal service, or sending the notice by the post according to the directions of the act; but if he elects a particular mode of service, without taking care that it is in conformity with the statute, it is his own fault, and he must bear the consequences of it. Upon the present occasion, therefore, as the revising barrister finds, in distinct terms, that the wharf at which the notice was served was not the respondent's place of abode, and that he had no place of abode in *Lower Mitton*, it appears to us that the notice of objection was not well served; and that the decision of the revising barrister was correct in point of law, and ought to be affirmed.

Decision affirmed.

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WANKLYN, Appellant, and WOOLLET,  
Respondent.

January 25.

**T**HIS was a consolidated appeal from the decision of the revising barrister for the county of *Monmouth*. The statement of facts had been tendered to the Master within the first four days of *Michaelmas* term, but he had declined to receive it, on the ground that the indorsement required by the stat. 6 *Vict. c.* 18. s. 42. had not been signed by the revising barrister. An application was subsequently made on behalf of the appellant, after the first four days of *Michaelmas* term

The revising barrister must sign in open court the indorsement on the statement of facts required by stat. 6 *Vict. c.* 18. s. 42.; and in the absence of such signature, the master has no authority to enter the appeal, nor the court jurisdiction to hear it.

The provisions of the 42d section, which relate to single appeals, are made applicable, by the 45th section, to consolidated appeals.

*Quære*, whether an agent, who objects on behalf of another, can be made an appellant in a consolidated appeal, or whether such appellant must not be a person actually interested in the subject-matter of the appeal?



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had elapsed, that the statement of facts might be transmitted to the revising barrister for him to make the necessary indorsement, and that the appeal might, after such indorsement had been made, be entered *nunc pro tunc* with the Master. This application was granted by the Court, subject to any objection which the counsel for the respondent might make when the appeal came to be argued. (a) The declaration of the appellant, in the statement of facts, was in these words: — “I, for and on behalf of *John Greaves*, and all other persons who are interested as appellants, do appeal from this decision.”

*Cockburn*, when the appeal was called on (*January 18th*), objected, on the behalf of the respondent, that the Court had no jurisdiction to hear the appeal. The stat. 6 *Vict. c. 18. s. 42.*, after giving the right of appeal, and requiring the revising barrister to prepare and sign a statement of facts, goes on to enact that “the said barrister *shall then indorse* upon every such statement the name of the county and polling district, or city and borough, and of the parish or township to which the same shall relate; and also the Christian name and surname, and place of abode, of the appellant and of the respondent in the matter of the said appeal, and shall sign and date such indorsement; and the said barrister shall deliver such statement, with such indorsement thereon, to the said appellant, to be by him transmitted to her Majesty’s Court of Common Pleas at *Westminster*, in the manner hereinafter mentioned; and the said barrister shall also deliver a copy of such state-

(a) See *Pring v. Estcourt*, *antè*, p. 505.

ment, with the said indorsement thereon, to the respondent in such appeal who shall require the same." The obvious meaning of the section is that the indorsement should be made and signed by the barrister in open Court. When the appellant endeavoured to enter the appeal in the first instance with the Master, the statement of facts, wanting the barrister's signature to the indorsement, was not such a document as the Master, under sect. 62., was at liberty to receive. The sixty-fourth section provides that no appeal shall be entertained or heard by the Court, "unless notice shall have been given by the appellant to the Masters of the said Court at the time, and in the manner hereinbefore mentioned." The notice is required by the sixty-second section to be given to the Master at the same time as the statement of the case; and consequently no proper notice has been given, and the Court has no power to permit the appeal to be entered *nunc pro tunc*.

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*Keating*, for the appellant. The forty-second section does not apply to consolidated appeals, which are regulated by the provisions of the forty-fourth section. Nothing is said in that section about indorsement, and it would lead to the greatest possible inconvenience, if it were held that, in a consolidated appeal, the names of perhaps 200 or 300 appellants must be indorsed on the case.

*Cockburn*, in reply. The forty-fifth section of the act provides that proceedings in consolidated appeals shall be subject to the same rules and regulations as a single appeal.

*Cur. adv. vult.*

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WILDE C. J. now delivered the judgment of the Court.

In this case we are of opinion that the appeal does not come before the Court under such circumstances as to give us jurisdiction to hear it. It appears that the appeal was brought to the Master to be entered, according to the provisions of the act of parliament; but that when offered to the Master it had not the indorsement signed by the revising barrister. An application was then made to the Court that the case should be signed by the revising barrister at a period subsequent to that at which it ought to have been regularly entered, and afterwards to allow the appeal to be entered *nunc pro tunc*. The Court, without expressing any opinion as to what would be the effect of such a signature, permitted the appeal to be entered, subject to any objection which might be raised, when the appeal came on for argument, against the right of the appellant to be heard. Accordingly, the case having been signed by the barrister after the first four days of *Michaelmas* Term had elapsed, the appeal was brought to the Master, and was entered. When the case was called on, Mr. Cockburn, on the part of the respondent, objected that there had not been a sufficient compliance with the provisions of the forty-second section of the act of parliament, and consequently that the appeal could not be heard. The stat. 6 *Vict. c. 18. s. 41.* directs in what manner the proceedings are to be conducted before the revising barrister in his Court; and the forty-second section enacts, "That it shall be lawful for any person who, under the provisions hereinbefore contained, shall have made any claim to have his name inserted in any list, or made any objection to any other person as not entitled

to have his name inserted in any list, or whose name shall have been expunged from any list, and who in any such case shall be aggrieved by or dissatisfied with any decision of any revising barrister on any point of law material to the result of such case, either himself or by some person on his behalf, to give to the revising barrister in Court, before the rising of the said Court, on the same day on which such decision shall have been pronounced, a notice in writing that he is desirous to appeal, and in such notice shall shortly state the decision against which he desires to appeal." The section proceeds to provide for the way in which the statement of facts is to be prepared by the barrister, and it then goes on to say that "the said barrister shall then indorse upon every such statement the name of the county and polling district, or city and borough, and of the parish or township to which the same shall relate; and also the christian name and surname, and place of abode, of the appellant and of the respondent in the matter of the said appeal; and shall sign and date such indorsement; and the said revising barrister shall deliver such statement, with such indorsement thereon, to the said appellant, to be by him transmitted to her Majesty's Court of Common Pleas at *Westminster*, in the manner hereinafter mentioned," &c. The sixtieth section enacts, "That all matters of appeal from or in respect of any decision of any revising barrister entertained in manner hereinbefore mentioned, shall be prosecuted, heard, and determined in and by her Majesty's Court of Common Pleas, at *Westminster*" &c. And by the sixty-second section it is enacted, "That every appellant who shall intend to prosecute his appeal shall, within the first

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four days in the *Michaelmas* Term next after the decision to which such appeal shall relate, transmit to the Masters of the said Court of Common Pleas the statement in writing so signed by the said revising barrister as aforesaid, and shall also therewith give or send a notice signed by him, stating therein his intention to prosecute the said appeal."

Now, the question that arises here is, whether, as no sufficient indorsement had been made when the case was first brought to the Master for the purpose of being entered, the appeal has since been so entered as to entitle the appellant to be heard. My learned brothers agree with me in thinking that the indorsement was essential, in order to render the appeal effectual, and to give the Court jurisdiction to hear it. It must be observed that the whole mode of proceeding in appeals is regulated by the stat. 6 *Vict. c. 18.*; and it is very difficult to say what portion of those regulations are to be considered obligatory, and what merely directory. Upon the present occasion the argument has been that the objection founded on the absence of a sufficient indorsement does not apply to the case before the Court, because this was a consolidated appeal, and it was contended that the requisitions of the forty-second section were limited to single appeals, not being repeated in the forty-fourth section, which regulates the proceedings in a consolidated appeal. But the forty-fifth section provides, "That in and with regard to every such consolidated appeal the like proceeding shall be had and taken, and the like rules and regulations shall apply, as in the case of any other appeal under this act." It is under that section that the transmission to the Court of every part of the proceedings

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relating to a consolidated appeal is authorised. There are no rules prescribed by which those things can be effected which are necessary to be done in order to bring the appeal to the stage at which it is to be heard, except with reference to the directions which are given in regard to a single appeal. It seems to me, therefore, that the only ground of argument relied on as an answer to the objection altogether fails. The forty-fifth section draws down to itself and embodies all the rules and regulations relating to single appeals, which are contained in the forty-second section, and makes them applicable to consolidated appeals, for which they are quite as necessary as for a single appeal, if not more so. If the signature to the indorsement be requisite in a single appeal, where there is only one appellant, it becomes much more important in consolidated appeals. There have been cases before the Court in which a hundred votes and upwards have depended upon one decision, and any one of the claimants might appeal; consequently the signature of the revising barrister to the indorsement, sanctioning the right of each particular appellant to appeal, is highly important in such cases. It appears, therefore, to us that, instead of the revising barrister's indorsement being less necessary in the case of a consolidated appeal, it is rendered more essential than where the appeal is a single one. The only question, then, is whether or not those regulations which are contained in the section referring to proceedings in regard to single appeals are brought down by the general words which I have read, and incorporated with the forty-fifth section. Taking that to be so, then, unless we find something in the forty-fifth section dispensing with the signature, the Court must hold that all the regulations in the forty-

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second section apply to the case of a consolidated appeal. Throughout that section, the indorsement is constantly referred to. The barrister is to sign the case and the indorsement; he is to deliver the case to the appellant with the indorsement; he is to deliver a copy of the case, with the indorsement, to the respondent; and he is to date the indorsement. Here the indorsement is dated in *September* last; but the time when it was signed is judicially known to the Court to have been after the first four days of *Michaelmas* Term. The direction in the forty-second section that the indorsement shall be dated, and that the barrister “shall *then* indorse” &c. points to the period at which the Court is sitting; and it is to be observed that he is required to do in open Court most, if not all, of those acts which he is called on to perform. It seems clear, therefore, that the indorsement was intended to precede the delivery of the case to the respective parties to the appeal, and consequently to precede the entry of the appeal by the Master. On the whole we think that the present objection is well founded, and therefore that the Court cannot hear the appeal.

There is another objection in the way of the appellant, which raises a question of considerable difficulty; but the Court do not profess to give any opinion upon it, and only draw attention to it now, in order that the objection may not arise in future cases. It appears by the forty-second section, that a person dissatisfied with the decision of the barrister may, either by himself or by some person on his behalf, give notice of appeal to the revising barrister; and then it says, “The appellant shall, by himself or some one on his behalf, at the end of the said statement, make a declara-

tion in writing, under *his* hand, to the following effect, ' I appeal from this decision.' " These words are not quite consistent with one another ; unless they mean that the person who acts on the behalf of another must be prepared with that party's actual signature, in which case he might sign the declaration " I appeal from this decision." Then, the forty-fourth section says, " That if it shall appear to any revising barrister that the validity of any number of such claims or objections determined by him at any court as aforesaid depends and has been decided by him upon the same point or points of law, and the parties, or any of them, aggrieved by or dissatisfied with his decision thereon, shall have given notice of an intention to appeal therefrom, it shall in such case be lawful for the said barrister to declare that the appeals against such decision ought to be consolidated &c. ; and thereupon it shall be lawful for the said barrister to name any person interested, and consenting, for and on behalf of himself and all other persons in like manner interested in such appeals to be the appellant or respondent respectively in such consolidated appeal &c. ; and the person so named appellant &c., or some one in his behalf, shall, at the end of the said statement, make and sign a declaration in the form or to the effect following : ' I, for myself and on behalf of all the other persons who are interested as appellants in this matter, and whose names are hereunder written, do appeal against this decision ' &c. And the person so named respondent in such consolidated appeal, or some one on his behalf, shall in like manner make and sign a declaration in writing in the form or to the effect following : ' I, for myself and on behalf of all the other persons interested as respondents

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in this matter &c. do agree to appear &c.’” The barrister, therefore, in the case of a consolidated appeal is only authorised to receive a declaration, either from an appellant or respondent, from a person acting *for himself, and* on behalf of all other persons interested in like manner. Now, on referring to the language of the declaration in the present case, instead of finding that the appellant has signed it for himself and all other persons interested, we see that an agent of the name of *Wanklyn* says, “ I, on behalf of *John Greaves*, appeal from this decision ;” not following the form given either in the forty-second or the forty-fifth sections. It may be argued, that the revising barrister has no authority to sanction the appeal of any person whatever, except the person actually interested in the subject-matter of the appeal ; and it may be material, if the objection be well founded, as to which the Court give no opinion, that such questions should be avoided in future.

Appeal struck out.

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WOOLLET, Appellant, and DAVIS, Respondent.

February 1.

AT a Court held before *T. C. S. Kynnersley, Esq.*, the barrister appointed to revise the lists of voters for the county of *Monmouth*, *James Birch* objected to the name of *John Llewellyn* being retained in the list of voters for the parish of *Peterstone* in the said county. The notice of objection sent to the said *John Llewellyn* by the said *James Birch* was as follows: —

“To Mr. *John Llewellyn*.

“I hereby give you notice, that I object to your name being retained in the *Peterstone* List of Voters for the county of *Monmouth*.

“Dated this 22nd day of *August*, 1846.

(Signed) “*JAMES BIRCH*, of ‘*The Oaks*,’

“On the Register of Voters for the Parish of *St. Woollos*.”

A notice, similarly signed, was sent by the said *James Birch* to the overseers of the parish of *Peterstone*. In the list of voters for the parish of *St. Woollos* the description of the said *James Birch* was as follows: —

Christian Name and Surname, &c.	Place of Abode.	Nature of Qualification.	Street, Lane, or other like Place in this Parish, &c.
Birch, James.	St. Woollos.	House and Land as Occupier.	The Oaks.

In a notice of objection to a county voter, the objector described himself as “of ‘*The Oaks*,’ on the register of voters for the parish of *St. Woollos*.” His name was on the list of voters for that parish, and in the fourth column, the description given of his qualifying property was “*The Oaks*.” Held, that such notice of objection and list of voters could not be coupled together for the purpose of furnishing a correct description of the objector’s place of abode, which must be collected from the notice itself; and, consequently, the description of the place of abode in the notice being too general, that the notice was insufficient.

It was objected, on the part of the voter, that the place of abode of the said *James Birch*, described in the

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register as *St. Woollos*, was not set forth in the notice of objection in manner and form required by law, inasmuch as it did not appear by necessary implication that "The Oaks," mentioned in the notice of objection as his place of abode, was in the parish of *St. Woollos*, or where it was situated. The revising barrister decided, that the notice of objection was sufficient, and, no evidence having been offered in support of the vote of the said *John Llewellyn*, expunged his name from the list of voters.

The place of abode of the objector was proved to be "The Oaks," in the parish of *St. Woollos*. The question for the opinion of the Court of Common Pleas was, whether, coupling together the notice of objection and the list of voters for the parish of *St. Woollos*, it did not sufficiently appear, that the place called "The Oaks," (stated in the list of voters to be the house occupied by the said *James Birch*,) was his place of abode, and that it was situate in the parish of *St. Woollos*. If the Court should be of opinion that the notice was sufficient, the register was to stand without correction; if they should be of a contrary opinion, the name of the said *John Llewellyn* was to be inserted in the list of voters for the parish of *Peterstone*.

*Cockburn* (in *Michaelmas* Term, November 16th) for the appellant. The objector has not complied either with the letter or the spirit of the stat. 6 *Vict.* c. 18. s. 7. The notice of objection required to be given by that section must be "according to the form numbered (5.) in the said Schedule (A.), or to the like effect." The objector has not followed the form, because he has omitted giving any sufficient description of his place of

abode at the foot of his notice; and he has not in any other way furnished the information which the act intended should be supplied. He states, indeed, in his notice, that he is of "The Oaks," on the register of voters for the parish of *St. Woollos*; but upon reference to the second column in the list of voters, it will be found that there is no description of the objector's place of abode, which is merely stated to be within the limits of the parish of *St. Woollos*. In the fourth column of the list the words "The Oaks" appear; those words, however, have no reference to the objector's place of abode, but simply to the situation of his qualifying property. An objector may reside in a different county from that in which the property which qualifies him as a county voter is situate. In *Gadsby v. Warburton* (a) the Court held a notice of objection sufficient, in which the objector described his place of abode as "*Poplar Grove, Didsbury*;" but in that case there was a reference to a known locality, which would have assisted the party objected to in his inquiries after the objector. No information of the kind has been given in the present instance.

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*Keating* for the respondent. In *Knowles v. Brook-  
ing* (b) it was held by a majority of the judges of this Court that a notice of objection was valid, although the objector's place of abode, as described in the notice, was altogether different from that which appeared against his name upon the list of voters. That is a much stronger case than the present. [*Maule, J.* The question here is, whether an objector who resides in *Cumberland* or

(a) *Antè*, p. 136.(b) *Antè*, p. 461.

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*Cornwall* may describe his place of abode as "*The Oaks*," without adding any thing else.] A party is not obliged to describe his place of abode as being within the limits of a parish; and if he were compelled to do so, in many instances the information would be nugatory. The parish of *Cheltenham* contains 30,000 inhabitants, and the parish of *St. Pancras* is twenty-one miles in circumference. *Gadsby v. Warburton* (a), which has been referred to on the other side, is itself an authority to shew that in describing an objector's place of abode, the name of the parish in which it is situate need not be stated. In every case which has yet been decided upon the sufficiency of a notice of objection the question has been whether the party objected to has had reasonable information respecting the locality in which the objector is to be found. [*Maule, J.* An objector's place of abode, if described as "*3, Pump Court, Temple*," would be sufficient, because the party might be easily found there; but if he were to describe himself as of "*Manchester*," or "*The Oaks*" or "*Rose Villa*," I think it would be rather too general.] The barrister has found that the objector's place of abode was "*The Oaks*," in the parish of *St. Woollos*, which is a question of fact rather than of law; *Hinton v. Hinton*. (b)

*Cockburn* in reply. The revising barrister had no right to take the list of voters in order to eke out the sufficiency of the notice of objection; and it is clear that he could not have held the notice of objection to be good *per se*, or he would not have left it as a question

(a) *Antè*, p. 136.(b) *Antè*, p. 529.

for the Court to decide whether it would be sufficient when coupled with the list of voters.

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*Cur. adv. vult.*

WILDE C. J. now delivered judgment. The question raised by the case for the opinion of the Court is expressed in the following terms: — “Whether, coupling together the notice of objection and the list of voters for the parish of *St. Woollos*, it did not sufficiently appear that the place called ‘*The Oaks*,’ stated in the list of voters to be the house occupied by the said *James Birch* (the objector), was his place of abode, and that it was situate in the parish of *St. Woollos*.” The question, although not very accurately expressed, which is intended to be raised for the opinion of the Court, depends upon the construction of stat. 6 *Vict. c. 18. s. 7*. By that section any person, objecting to the name of any other person being retained in any list of voters for a county, is required to give notice to the person objected to according to the form No. (5.) Schedule (A.), “or to the like effect.” The form referred to denotes that the notice is to contain a statement of the place of abode of the objector, and the name of the parish in which the objector is registered; and it also prescribes that the name of the party objected to, and the place of his abode, as described in the list of voters, shall be inserted in the notice. In this case the names both of the objector and the person objected to were contained in the list of voters for the county of *Monmouth*. The notice of objection stated the objector’s place of abode to be “*The Oaks*,” without any more particular description; and added, that the objector’s name was on the register of voters for the parish of *St. Woollos*.

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The latter statement, it is to be observed, imported only that the property qualification of the objector was locally situated in the parish, and not that he was resident within it. The case then states that the person objected to attended before the revising barrister and declined to prove his qualification, upon the ground that the objector had not complied with the statute, by stating his place of abode in the notice given by him, such statement being so general as not to be available as a statement of his place of abode. It appears, further, from the case, that the controversy before the barrister was, that the statement contained in the notice was insufficient; but it was also contended, that the notice also stated that the objector was resident in the parish of *St. Woollos*, and that the party receiving the notice might, by resorting to the register, have learned that "*The Oaks*" was in the parish of *St. Woollos*, and that, therefore, the notice was sufficient. The barrister admitted this to be the case, and held that the notice, though insufficient in itself, might be made valid by being coupled with the register; and as the two documents so coupled together furnished the means of ascertaining that the objector's place of abode was at "*The Oaks*," in the parish of *St. Woollos*, he held that the notice was in sufficient conformity with the statute. We are of opinion that this decision is wrong, and that the notice of objection is not made in the form or to the effect required by the statute. The party receiving the notice is not bound to take the trouble of resorting to any other means than the notice itself in order to obtain information as to the place of abode of the party sending it.

Decision reversed.

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2. A collector of the window-tax is entitled to vote; for, notwithstanding the stat. 43 G. 3. c. 99., he is still to be considered as appointed by the Land Tax Commissioners, and not by the Commissioners of Assessed Taxes, and is therefore within the exception created by the second section of stat. 22 G. 3. c. 41. *Dyer v. Gough*,

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3. Assessors of the window-tax have also a right to vote. *Baxter v. The Overseers of Doncaster*,

Page 227. note (a)

4. A clerk to a receiving inspector of taxes appointed and paid by the Treasury, under stat. 1 & 2 W. 4. c. 18. s. 2., was in the habit of assisting the inspector in the receipt of the window duties, &c. The clerk took the oath for collectors or officers for receipt under the Income Tax Act, but he had not been recognised in any other way as a public officer, and his salary was paid, and he was appointed, and was liable to be discharged by the inspector. *Held*, that he was not disqualified by the stat. 22 G. 3. c. 41. s. 1. *Cooper v. Harris* (Clenishaw's Case), 228

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### LETTER CARRIER.

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"Travelling abroad" is a sufficient description in the second column, when the party has no fixed place of abode. *Walker v. Payne*,

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2. The situation of the premises in respect of which a party claims to vote for a county, is sufficiently described under the stat. 6 Vict c. 18. ss. 4. and 5. (Schedule (A), Nos. 2 and 3), if the street or lane where the property is situate be stated (none of the houses therein being numbered), without also stating the name of the occupying

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tenant; but if the houses are numbered, the number also should be given.

If the premises are not in a street or lane, or other like place, but in a road, or on a common, or the like, the name of the property should be given, if known by any, or the name of the occupying tenant.

*Eckersley v. Barker*, Page 190

3. It is a question of fact for the determination of the revising barrister, within the meaning of stat. 6 Vict. c. 18. s. 40., whether the qualifying property, on the face of the old register, be sufficiently described for the purpose of identifying it; and the Court will not review his decision. *Wood v. The Overseers of Willesden*, 314

#### C. In Boroughs.

##### (a) Description of Qualification.

"Part of a house" is a sufficient description of an occupier's qualification to vote for a city or borough, within the meaning of 2 Will. 4. c. 45. s. 27. *Judson v. Lockett*, 490

##### (b) Successive Occupation.

Where a party has occupied different premises in immediate succession during the twelve calendar months next previous to the last day of July, they ought all to be set forth in the description of his qualification in the list of voters.

*Bartlett v. Gibbs*, 73

##### (c) Joint Occupation.

In stating the nature of a voter's qualification in a city or borough,

U U

when the right of voting depends on property, it is only necessary to describe the property which gives the qualification, and not its incidents.

Where, therefore, a party occupied a house and shop jointly with another person,—*Held*, that it was not necessary to state the fact of the joint occupation in the list of voters, and that the words “house and shop” were a sufficient description of his qualification, *Daniel v. Camplin*, Page 264  
And see NOTICE OF CLAIM B. (a) 1.

#### D. Amendments in.

1. An erroneous statement of the place of abode in the list of voters, may be corrected by the revising barrister, under stat. 6 Vict. c. 18. s. 40. *Lockett v. Knowles*, 451
2. When a party has occupied different premises in immediate succession in a borough, an omission in the list of any of such premises, amounts to a mis-description of his qualification, which the revising barrister has no power to amend. *Bartlett v. Gibbs*, 73

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##### NOTICE OF CLAIM.

###### A. In Counties.

###### Address and Service of.

The parish of *St. M.* was divided into four districts, popularly, but improperly, called townships; one of the four overseers appointed for the parish at large undertaking, together with the assistant overseer, the exclusive management of one of these so-called townships. Each of such overseers respectively published a separate notice, requiring persons entitled to vote

in respect of property situate within his so-called township, to send in their claims to him and the assistant overseer. *Held*, that a notice of claim directed to and served upon "the overseers of the township of S." was sufficient; service upon one overseer of St. M. being service upon all, and the description being one which must have been "commonly understood" to apply to the overseers of the parish in which such so-called township was situate. *Elliott v. The Overseers of St. Mary Within*, Page 575

#### B. In Boroughs.

##### (a) Form of.

##### (Successive Occupation.)

1. Where the qualification of a claimant to vote for a borough, consists of two houses occupied in immediate succession, the number of each house, if numbered, should be stated in the notice of claim, and in the list of claimants.

Therefore, where a claimant, so qualified, had only inserted in his notice of claim the number of the house secondly occupied, and the barrister decided that the omission of the number of the first house in the list of claimants disentitled the party to be inserted in the list of voters, *Held*, that the decision was right.

*Semble*, per *Erle J.*, that if the number had been supplied to the satisfaction of the barrister, he ought to have inserted it in the list. *Flounders v. Donner*, 365

2. A party whose qualification to vote for a borough was founded on the occupation of two houses in immediate succession, described in his notice of claim, under the third column, the nature of his qualification as "house," pointing out in the fourth column the situation of the two houses in question: *Held*, that such description of his qualification was sufficient, under stat. 6. *Vict. c. 18. s. 15.*, Schedule (B.) Form No. 6, as the third column was intended to point out the general nature of the qualification, and the fourth to give a more particular description of it.

*Held*, also, per *Coltman J.*, that at all events the revising barrister was empowered, under stat. 6. *Vict. c. 18. s. 40.*, to amend the description in the third column, by inserting therein "houses occupied in immediate succession." *Hitchins v. Brown*, Page 328

##### (b) Service of.

If the 20th *July* falls on a *Sunday*, service on that day of a notice of claim upon an overseer is sufficient, under stat. 6 *Vict. c. 18. s. 4.* *Rawlins v. the Overseers of West Derby*, 373

##### (c) Transmission of, by post.

The production of a stamped duplicate notice of claim, is conclusive to show that the original notice of claim was delivered to the overseers in the ordinary course of post, within the stat. 6 *Vict. c.*

18. ss. 100, 101. *Bayley v. the Overseers of Nantwich*, Page 363

## NOTICE OF OBJECTION.

### A. Form of.

#### (a) Date.

A notice of objection given to the overseers, or to the party objected to, pursuant to stat 6. *Vict. c. 18. s. 17*, must state the year of our Lord in the dating thereof, or it will be insufficient. *Beenlen v. Hockin*, 526

#### (b) Specification of List, to which Objection refers.

1. The note at the foot of the form No. 10. Schedule (B.), annexed to 6 *Vict. c. 18.*, applies only to cities or boroughs where the overseers are required to make out two lists of voters; and the note does not apply at all to form No. 11.

Therefore in *London*, where the overseers only make out the list of householders in their own parish, a notice of objection to the overseers need not specify the list to which the objection refers; nor need the notice given to the party objected to. *Wansey v. Perkins* (Quigley's Case), 235

2. In cities or boroughs where overseers are required to make out two lists of voters, a notice of objection to the overseers must specify the particular list to which the objection refers, even when the name of the party objected to appears in one list only. *Barton v. Ashley*, 307

3. In the borough of *Taunton* the overseers make out two lists, one of parties entitled to vote under stat. 2 *W. 4. c. 45. s. 27.*, the other of potwallers.

A notice of objection was in the following form:—“I object to your name being retained on the list of persons entitled to vote *as householders* in the election,” &c. *Held*, that the notice was sufficient, although the words, “as householders,” are not in the form No. 11. Schedule (B.) in stat. 6 *Vict. c. 18.*, it not appearing that the party objected to had been misled by the insertion of those words. *Allen v. House*, Page 255

#### (c) Name of Objector.

A notice of objection was signed “*William Nicholas*, on the list of voters for the parish of *Madeley*.” The name of *William Nicholas* appeared on the *Madeley* list of *claimants*, but in the list of *voters* for that parish it stood thus:—“*William Nickless*.” *Held*, that the sufficiency of the notice was a question of fact, and not of law, the real question being, whether the name was so stated in the list of voters as to be commonly understood, pursuant to stat. 6 *Vict. c. 18. s. 101*. *Hinton v. Hinton*, 259

#### (d) Place of abode of Objector. In Counties.

1. A notice of objection was signed “*John Gadsby*, of *Poplar Grove*,

*Didsbury*, on the register of voters for the township of *Manchester*." In the register, his place of abode was also stated to be "*Poplar Grove, Didsbury*." *Held*, first, a sufficient compliance with the form prescribed by stat. 6 *Vict. c. 18. s. 7.*, without stating the name of the parish to which the township of *Manchester* belonged.

*Secondly*, that the description in the notice of the objector's place of abode, did not require the addition of any county or large town, in or near which *Didsbury* was situate, *Didsbury* being itself a township.

*Thirdly*, that the objector was right in describing his place of abode as it appeared on the register of voters. *Gadsby v. Warburton*, Page 136

2. In a notice of objection to a county voter, the objector described himself as "of '*The Oaks*,' on the register of voters for the parish of *St. Woollos*." His name was on the list of voters for that parish, and in the fourth column, the description given of his qualifying property was "*The Oaks*." *Held*, that such notice of objection and list of voters could not be coupled together for the purpose of furnishing a correct description of the objector's place of abode, which must be collected from the notice itself; and, consequently, the description of the place of abode in the notice being too general, that the notice was insufficient. *Woollet v. Davis*, 607

### *In Boroughs.*

3. A notice of objection was signed by the objector, with the addition of the true place of his abode, as it was at the time of serving the notice, this place of abode being different from that which appeared against his name upon the list of voters — *Held*, per *Tindal C. J.*, *Coltman J.* and *Erle J.*, that the form of the notice was a sufficient compliance with the stat. 6 *Vict. c. 18. s. 17. Schedule (B.)*, Nos. 10, 11.; *Maule J. dissentiente. Knowles v. Brooking*, Page 461

4. *New Sarum* comprises part of the parish of *Fisherton Anger*, in which parish is *Fisherton Street*.

A party whose name was on the list of voters for that parish, his place of abode being there described as *Fisherton Street*, served a notice of objection in which he described himself as "of the parish of *F. A.* in the said borough, on the list of voters for the said parish of *F. A.*" No other person of the same name was on the list for that parish. *Held*, that the notice was sufficient. *Wills v. Adey*, 481

5. A notice of objection truly described the objector's place of abode as "No. 398, High Street, *Cheltenham*," the description of it in the register of voters being "*Cheltenham*" only. *Held*, that the notice was a sufficient compliance with the form prescribed by 6 *Vict. c. 18. s. 7. Pruett v. Cox*, 304



*(e) Description of the Objector.*

1. In the borough of *Lancaster* the register is composed of four separate lists of names, comprising one list for each of the three townships into which the borough is divided, made out by the respective overseers, and a list of freemen made out by the town-clerk.

A notice of objection, describing the objector, who was on the list of freemen, as being "on the list of voters for the borough of *Lancaster*, was held insufficient, under stat. 6 *Vict. c. 18. s. 17. Schedule (B.)*, No. 11. *Held*, also, that the defect in the notice was not an "inaccurate description," and therefore was not cured by the 101st section. *Edsworth v. Farrer*, Page 517

2. A notice of objection signed by *W. T.*, describing himself to be "on the list of voters for the parish of *Clifton*," where his name did not appear, being only on the alphabetical list of the freemen of the city of *Bristol*, in which he was stated to be "of the parish of *Clifton*:" *Held*, insufficient. *Tudball v. Town-clerk of Bristol*, 7  
And see *suprà*, (c).

*(f) Signature of Objector.*

A notice of objection under stat. 6 *Vict. c. 18. s. 17.*, must be signed by the *hand* of the person object-ing.

So also must be the stamped

duplicate, when the notice is sent by post, under section 100.

*B. Service of.*

1. Service of a notice of objection upon one of the overseers is good service upon all, although the overseer served be not one of those who signed the list of voters for the parish. *Beenlen v. Hockin*, Page 526
2. An objector who selects the mode of service prescribed by stat. 6 *Vict. c. 18. s. 17.*, by causing his notice to be left at the place of abode of the person objected to, as stated in the list of voters, must take care to serve it at his actual place of residence.

The place of abode of a voter for a borough, was described in the list made out by the overseers as "*Lower Mitton*," and his qualifying property to be an "office and wharf" in "*Lichfield Street*," which was situate in *Lower Mitton*. His true place of abode was not in *Lower Mitton*, but at *Hartlebury*, though he had formerly resided in *Lower Mitton*, but never in that part of it called *Lichfield Street*. A notice of objection, addressed to the voter at *Lower Mitton*, was left at the wharf in *Lichfield Street*. *Held*, that the service was insufficient. *Allen v. Greensill*, 592

*C. Transmission by post.*

1. The production of a stamped duplicate notice of objection, under

## NUMBER OF HOUSE.

stat. 6 *Vict. c. 18. s. 7. 100.*, is *conclusive* evidence that the original notice reached the party objected to on the day on which it would have been delivered in the ordinary course of post.

So also, with respect to a notice of objection sent by post to the overseers, pursuant to *s. 101.*

*Bishop v. Helps*, Page 353

2. A notice of objection sent by post, is not void because delivered, in the ordinary course of post, on a *Sunday. Colville v. The Town-Clerk of Rochester*,

380. note (a)

3. A notice of objection, delivered open and in duplicate, to a post-master's managing clerk, is sufficient within the stat. 6 *Vict. c. 100.*

*Allan v. Waterhouse*, 92

4. The production by the objector himself of a stamped duplicate notice of objection, is sufficient, under the 6 *Vict. c. 18. s. 100.*, though the notice was posted by an agent. *Cuming v. Toms*, 151

## NUMBER OF HOUSE.

See LIST OF VOTERS, B. 2.

NOTICE OF CLAIM, B. (a) 1.

## OBJECTION AND OBJECTORS.

See NOTICE OF OBJECTION.

## OCCUPATION "AS OWNER OR TENANT."

See QUALIFICATION. B. (a) 1, 2, 3. 6.

## POTWALLERS. 623

## OCCUPYING TENANTS, IN COUNTIES.

See QUALIFICATION, A. (c).

## PAPER BOOKS, DELIVERY OF.

See PRACTICE, C.

## "PART OF A HOUSE."

See LIST OF VOTERS, C. (a).

## PARTNERSHIP SHARES.

See QUALIFICATION, A. (a) 2.

## PAYMENT OF RATES.

See RATES.

## PLACE OF ABODE.

See LIST OF VOTERS, A. 1; B. 1; D. 1.

NOTICE OF OBJECTION, A. (d).

## POST, TRANSMISSION OF NOTICES BY.

See NOTICE OF CLAIM, B. (c).

NOTICE OF OBJECTION, C.

## POSTMASTER.

See NOTICE OF OBJECTION, C. 3.

## POTWALLERS.

See NOTICE OF OBJECTION, A. (b) 3.

QUALIFICATION, B. (h) 1.

## PRACTICE.

A. *Signature of Case.*

1. The Court refused to allow an appeal against the decision of a revising barrister to be entered, where the barrister, after consenting to grant a case, and expressing his approval of the points raised in a statement of facts, returned the statement to the parties to draw up in another form, and died without signing the case as altered in accordance therewith. *Nettleton v. Burrell*, Page 157
2. The statement of facts signed by the revising barrister, should also be signed by him on the back thereof, whether the appeal be consolidated or not; but where the barrister had omitted to sign the indorsement, and the appellant had used due diligence to procure his signature thereto, the Court allowed an appeal to be entered, *nunc pro tunc*, on the fifth day of term, reserving the right of the respondent to object to the entry on the hearing of the appeal. *Pring v. Estcourt*, 505
3. The revising barrister must sign in open Court the indorsement on the statement of facts required by stat. 6 *Vict. c. 18. s. 42*; and in the absence of such signature, the Master has no authority to enter the appeal, nor the Court jurisdiction to hear it.

The provisions of the 42nd section, which relate to single ap-

peals, are made applicable by the 45th section, to consolidated appeals. *Wanklyn v. Woollet*,

Page 597

B. *Notice of Intention to prosecute Appeal.*(a) *To the Master.*

1. The 62nd section of the stat. 6 *Vict. c. 18.* requires that the appellant shall, within the first four days of *Michaelmas* term, transmit to the Masters of the Court the statement in writing, signed by the revising barrister; and therewith also give or send a notice signed by him, stating his intention to prosecute the appeal; and by s. 64. it is provided, that no appeal shall be entertained, unless such notice shall have been given.

Where, therefore, such notice had not been given within the first four days of the term—*Held*, that the Court had no jurisdiction to order the Master to enter the appeal. *Autey v. Topham*, 1

2. The Court will not permit an appeal to be entered, unless a notice be delivered to the Master, signed by the appellant, within the first four days of *Michaelmas* term; even where the application for an enlargement of the time for giving the notice is made within the first four days of the term, and an affidavit by the appellant's agent shows that it was not practicable to give the notice within the pe-

riod required by the act. *Simpson v. Wilkinson*, Page 5

3. The Court refused to allow an appeal to be entered *nunc pro tunc*, where the appellant's attorney in the country had omitted to obtain his client's signature to the notice to prosecute the appeal till the third day of *Michaelmas* term, and the notice consequently did not reach London on the fourth day of term before the Master's office was closed. *Petheridge v. Ash*, 507

(b) *To Respondent.*

1. The day appointed for hearing registration appeals, is the *first* day appointed for that purpose by the Court, within the meaning of stat. 6 *Vict. c. 18. s. 64.*, which requires ten days' notice *at least* to be given to the respondent, of the appellant's intention to prosecute the appeal.

Where, therefore, the decision of the revising barrister was given on the 16th *October*, and the first day appointed for hearing appeals was the 12th *November*, and notice was given on the 2nd *November* to the respondent of the intention to prosecute: — *Held* (the respondent not appearing), that the appeal could not be heard, and that the Court could not postpone the hearing, on the ground that there had not been reasonable time to give such notice. *Norton v. The Town Clerk of Salisbury*, 538

2. A waiver by the respondent of notice of the appellant's intention to prosecute the appeal, pursuant to stat. 6 *Vict. c. 18. s. 64.*, will not dispense with the necessity of proving such notice to have been given, before the appeal can be heard. *Newton v. The Overseers of Mobberley*, Page 335

3. Nor does an application on the behalf of the respondent for leave to deliver paper books, dispense with proof of notice of the appellant's intention to prosecute the appeal. *Grover v. Bontems*, 544

C. *Paper Books.*

1. The delivery of paper books is a matter quite within the discretion of the Court, and when they had not been delivered to the judges' clerks four clear days before the first day appointed for hearing the appeals, the Court permitted their delivery *nunc pro nunc*, there appearing to be sufficient time to enable the judges to peruse them. *Elliott v. The Overseers of St. Mary Within*, 508
2. The Court allowed paper books to be delivered to the Judges *nunc pro nunc*, when notice had been given late in the afternoon of the 7th *November*, that the Court would proceed to hear registration appeals on the 13th *November*, and the paper books had been actually tendered to the Judges' clerks on the 10th *November*. *Croucher v. Browne*, 303
3. The appellant ought to deliver paper books to the Chief Justice

and the senior puisne Judge, and the respondent to the two junior puisne Judges of the Court. *Allan v. Waterhouse*,. Page 93, note (a)

#### D. Appearance of Parties.

1. Where the respondent does not appear, the Court will not give judgment for the appellant without the production of an affidavit, stating that ten days' notice has been given to the respondent of the appellant's intention to prosecute the appeal. *Colville v. The Town Clerk of Rochester*, 380, note (a)
2. When the respondent does not appear, although he has received due notice of the appellant's intention to prosecute the appeal, the Court will, nevertheless, require the appellant's case to be argued before they give judgment. *Cooper v. Harris* (Austin's case), 207
3. The fact of counsel having been instructed to appear for the respondent, does not amount to an appearance by him. *Grover v. Bontems*, 544
4. Where a respondent appears, he cannot object to the form of the notice of intention to prosecute the appeal, given under s. 62. *Rawlins v. The Overseers of West Derby*, 373
5. Where the appellant does not appear, and the respondent does, the decision of the revising barrister will be affirmed with costs. *Bage v. Perkins*, 255

#### E. Remitting Case to Revising Barrister.

1. The Court has no power to remit to the revising barrister the case drawn up by him, because he has omitted a fact deemed material by one of the parties, but considered immaterial by the barrister; his finding upon the facts being conclusive. *Hinton v. The Town Clerk of Wenlock*, Page 123
2. When the revising barrister has found, in a consolidated appeal, that all the cases depend upon the same point of law, the Court will not remit the case to him, in order that he may state the qualifications of the parties whose appeals are consolidated with the principal case. *Hitchins v. Brown*, 328
3. If the case state evidence, instead of facts, it will be remitted. *Pitts v. Smedley*. 196, note (a)
4. The case can only be remitted to the barrister when, in the opinion of the Court, the statement of the matter of the appeal is not sufficient to enable them to give judgment in law. *Hinton v. The Town Clerk of Wenlock*, 123

#### F. Hearing of Case.

1. Alterations cannot be made in the case by the consent of the parties. *Whithorn v. Thomas*, 126, note (a).
2. In arguing the appeal, the appellant begins. *Webb v. the Overseers of Birmingham*, 6
3. Only one counsel on each side can be heard. *Gadsby v. Warburton*, 136

## PRESUMPTION OF FEE.

4. The Court will not receive as authorities, decisions of election committees of the House of Commons. *Whithorn v. Thomas*,

Page 125

5. No objection can be argued upon the hearing of an appeal, which is not raised by the case stated by the revising barrister. *Simpson v. Wilkinson*, 168; *Nunn v. Denton*,

178

### G. Costs.

Where one side only is heard, the party succeeding will be entitled to costs. *Allen v. House*, 255

But this is not an invariable rule. *Walker v. Payne*, 324; *Gale v. Chubb*,

550

The Court refused costs, though one side only had been heard, when the question was entirely a matter of law. *Croucher v. Browne*,

388

See also *suprà*, D. 5.

## PRESUMPTION OF FEE ARISING FROM POSSESSION.

See QUALIFICATION, A. (a) 1.

### QUALIFICATION.

#### (a) Freehold Estate.

##### A. In Counties.

(Presumption from Possession.)

1. A. was owner, with others, of tenements within the township, and the limits of the ancient borough of *Kendal*. The tenements were held by burgage tenure, and

## QUALIFICATION. 627

by the custom of the borough were conveyed by deed, without livery of seisin or inrolment; and when they were the wife's property, without any separate examination of the wife. The customs relating to the right of females to inherit, and to dower, were different from those prevailing at common law. No surrender or admittance was required, nor was any fine paid, upon descent or alienation. There was a tradition, but no record, of Courts Baron, or Customary Courts, having been formerly held within the township; but the tenements were held subject only to the payment of fixed annual rents (some of which were payable to the lords of the manor, and others to private individuals), and no other service had been performed in respect of them. The owners of the tenements had voted for knights of the shire at four elections, as freeholders. *Held*, that as A.'s interest in the tenements exceeded the annual value of forty shillings, and there was nothing to show that the freehold was in any body else, it must be presumed that his estate was of freehold tenure, and therefore, that he was entitled to vote for the county. *Busher v. Thompson*,

Page 551

(Partnership Shares.)

2. Land was bought, and a fulling-mill erected thereon, and fitted up with machinery, out of monies contributed by a large number of per-

sons. By a general partnership deed the land was conveyed to trustees and their heirs, and was vested in them for the purpose of the conduct and management of the trade carried on by the subscribers.

The concerns of the company were managed by a committee appointed by the shareholders, and the committee were in the occupation of the mill and premises, and employed servants to work it.

The partnership deed declared, that the lands, mill, &c. should be deemed and considered as or in the nature of personal estate, and not real estate, and should be held in trust for the parties thereto, as part of their partnership stock in trade. It also provided that the land, &c. should be liable to the claims for indemnity, &c. of the committee and trustees.

*Held*, that as there was no trust which was absolutely incompatible with the existence of a present equitable freehold interest in the premises in the several shareholders, such equitable interest might be considered as vested in them, and the value of their shares being sufficient, conferred a vote on each of them.

The trustees had, under the powers given by the deed, borrowed money for the purposes of the mill, for which they had given bonds and notes in their own names. *Held*, that the money so borrowed had not the effect of a mortgage

on the shares. *Baxter v. Newman*,  
Page 287

(*Charities.*)

3. By stat. 35 *Eliz. c. 7.*, it was enacted, that for the space of twenty years next ensuing, persons might make feoffments to the use of the poor, and for the provision or maintenance of houses of correction, or abiding-houses, of lands and tenements, in the same manner as might have been done under a former statute, 18 *Eliz. c. 20.* The stat. 39 *Eliz. c. 5.* after referring to the stat. 35 *Eliz. c. 7.*, recited, that no hospital, house of correction, or abiding-place, could be incorporated but by the Crown, or under license from the Crown by letters patent; and enacted, that hospitals might be founded, by deed inrolled in Chancery, and that such hospitals should be incorporated and have perpetual succession.

A freehold building, called *Burghley Hospital*, was divided into several rooms, each of the annual value of 4*l.* Each room was separately inhabited by a bedesman, appointed under certain ordinances purporting to have been made A. D. 1597 (before the stat. 39 *Eliz. c. 5.*), but of which only a printed copy existed. No deed, or charter, or letters patent relating to the hospital, could be found; neither was there any common seal, nor any inrolment under the stat. 39 *Eliz. c. 5.* The ordi-



nances referred to certain feoffees and their heirs, but none were known to exist. No person admitted as a bedesman had ever been known to be removed during his life, but a power of amotion was contained in the ordinances (by which the hospital was governed) for certain infirmities and vices specified therein. *Held*, that a legal foundation for the hospital might be presumed, not necessarily investing the bedesmen with a corporate character, and that they were entitled to a separate equitable estate of freehold in their respective rooms. *Simpson v. Wilkinson*, Page 168

4. By letters patent, dated 38 *Eliz.*, the governors of *Jesus Hospital, Rothwell*, were incorporated and empowered to appoint and amove a principal and twenty-four poor men, so often as it should seem to be convenient to them, or the greater number of them. The letters patent also empowered the governors to make bye-laws whereby it was ordained, that for certain offences therein described, or other lawful and reasonable cause, the principal and inmates might be removed. No principal or inmate had been expelled the hospital. The governors received the rents of the hospital estates, and paid them to the principal and poor men. The principal was provided with a house and garden, and each inmate with a room and piece of ground within the hospital, of a value exceeding 40s. per annum.

*Held*, that the appointments of the principal and inmates under the charter, did not confer upon them any freehold interest entitling them to a vote for the county, but merely an estate during the pleasure of the governors. *Davis v. Waddington*, Page 159

5. In 1680, the Duke of *Norfolk* conveyed lands and tenements, partly situate in *Yorkshire*, and partly in *Nottinghamshire*, to trustees, for maintaining *Shrewsbury Hospital, Sheffield*, and paying the inmates according to certain constitutions. The constitutions ordained (*inter alia*), that there should be one governor and twenty poor persons in the hospital; that the rents of the said lands, &c. should be paid into the treasury of the hospital; that each inmate should receive out of the monies so paid in, 2s. 6d. a week, and an allowance of coals and clothing; and that whenever the monies in the treasury exceeded 100*l.*, the surplus should be equally distributed among the pensioners.

By a subsequent private act of parliament, it was enacted that, instead of the surplus revenues being thus distributed, additional pensioners should be chosen, and the trustees were directed from time to time to add as many more pensioners as the revenues of the hospital would allow, and also to pay to the pensioners, according to the circumstances of the case, and the exigencies of the times, such fixed stipends as they should



think fit, and alter such stipends as they should find requisite, so that the stipends should at no time be reduced below 3s. 6d. a week in money.

The present number of inmates is the same as the number required by the original constitutions of the hospital. The revenues of the hospital arise entirely from real property, and the trustees have no beneficial interest in any part of it. Each inmate receives a fixed stipend of 10s. a week. *Held*, that as the trustees might at any time increase the number of pensioners, and reduce the sum paid to the present inmates to 3s. 6d. a week, the inmates had no equitable estate in *Nottinghamshire*, of a sufficient value to confer the franchise.

*Semble*, per *Erle J.*, that the inmates had no equitable estate in land, but only an interest in a sum of money.

*Semble*, that the interest of the inmates in the rents received from the estates in the two counties was apportionable. *Ashmore v. Lees*, Page 337

(*Rent-charge.*)

6. Actual possession of a rent-charge, within the meaning of stat. 2 *W. 4. c. 45. s. 26.*, is the actual manual receipt of the rent itself, or some part of it, or of something in lieu of it.

Therefore, where a rent-charge was created by deed, dated *Ja-*

*nuary*, 1845, whereby the first payment was to become due on the 1st *January*, 1846 — *Held*, that the grantee was not entitled to be registered, as having been in the actual possession thereof for six calendar months previous to the last day of *July*, pursuant to that statute. *Murray v. Thorniley*, Page 496

7. A rent-charge which had been originally created in 1838, payable quarterly, and which had been regularly paid to the grantee up to the 29th *September*, 1845, was by him assigned on the 19th *January*, 1846, to *A. B. and C.*, in trust for themselves, *D.*, and others. The first payment of the rent, after the assignment, was on the 29th *April* following. *Held*, that *D.* was not entitled to be registered in respect of his having been six months in actual possession of the rent-charge, within the meaning of stat. 2 *W. 4. c. 45. s. 26.* *Hayden v. The Overseers of Tiverton*, 510

(*Splitting Act.*)

8. To render a conveyance void, under the stat. 7 & 8 *W. 3. c. 25. s. 7.*, as having been made in order to multiply voices, or to split and divide the interest in any houses or lands, the seller must be party or privy to the illegal object intended by the conveyance.

The owners of a house in *Lichfield* had contracted to sell it for a valuable consideration to *A.*,

who, after such contract, sold it *bonâ fide* to six other persons, and caused the conveyance to be made from the original owners to them. The object of *A.* in so doing was to increase the number of voters in *Lichfield*, but the object of the six purchasers was a *bonâ fide* investment of their money, though they expected that the possession of the property would entitle each of them to vote. *Held*, that as it did not appear that the parties conveying had any knowledge of the object for which the house was purchased, the conveyance was not void under the statute. *Marshall v. Bown*, Page 278

9. A *bonâ fide* purchase of land for a valuable consideration is not rendered void by the stat. 7 & 8 Will. 3. c. 27. s. 5., although the vendees buy the land with the object of splitting and dividing the interest therein among themselves, and such object is known and acquiesced in by the agent of the vendor; the vendor himself not knowing that the object of the vendees is to multiply voices. *Hoyland v. Bremner*, 381

10. A conveyance made in completion of a *bonâ fide* contract of sale, where the money is paid on the one hand, and possession of the land taken on the other, and where there is no secret reservation or trust for the benefit of the vendor, is not within the meaning of the stat. 7 & 8 Will. 3. c. 25. s. 7., though the avowed object of

both the vendors, and vendees in becoming parties to the conveyance, is the multiplying of voices in the election of members of parliament. *Alexander v. Newman*, Page 404

11. A *bonâ fide* conveyance by a father to his two sons, in consideration of natural love and affection, though made principally for the purpose of entitling them to be registered as voters, is not void, as being within the operation of stat. 7 & 8 Will. 3. c. 25. s. 7, *Newton v. Hargreaves*, 424

12. The Court will not determine whether the circumstances attending the grant of a rent-charge for the express purpose of conferring on the grantee a qualification to vote, are such as show the grant to be void, upon the ground of fraud; that being a matter of fact which the barrister must find for himself. *Newton v. The Overseers of Mobberley*, 427

(b) *Leaseholds.*

A lessee of houses, situate within a borough, for the unexpired residue of a term originally created for not less than sixty years, is entitled to claim a vote for the county in respect of such of the houses as are not individually of sufficient value to give a right of voting for the borough, but are collectively of the clear yearly value of not less than 10*l.* over and above all rents and charges payable out of or in respect of the

same, although one of the houses comprised in the lease is of sufficient value to confer the borough franchise. *Webb v. The Overseers of Birmingham*, Page 18

(c) *Occupying Tenants.*

To entitle an occupying tenant to vote for knights of the shire, under stat. 2 W. 4. c. 45. s. 20., he must be liable to a single yearly rent of not less than 50*l.*, payable in respect of lands held under one landlord. *Gadsby v. Barrow*, 142

B. *In Boroughs.*

(a) *Nature of Occupation.*

("As Owner or Tenant.")

1. An officer in the service of government, occupying, as such, rent free, a house (no part of which is used for public purposes) belonging to government, in part remuneration for his services, is a "tenant" of such house, within the twenty-seventh section of the Reform Act. *Hughes v. The Overseers of Chatham*, 51
2. The appellant, the surgeon of *Greenwich Hospital*, occupied, as such, a house belonging to the Commissioners of the Hospital, in the infirmary, (which house was appropriated to the surgeon for the time being,) and had occupied it ever since he was first appointed. By the Admiralty regulations, the officers of the hospital are to inhabit the

apartments assigned to them, and no exchanges, &c., can be made without the permission of the Lords Commissioners. The surgeon is only removable by the Admiralty, and that for misbehaviour. *Held*, that under these circumstances the appellant did not occupy, either as owner or tenant, within the meaning of the stat. 2 W. 4. c. 45. s. 27. *Dobson v. Jones*, Page 105

3. Six persons, members of a political association, were the joint lessees of a house, and were alone liable for the rent thereof. Nothing was said in the lease of the purpose for which the premises were taken, but they were in fact used for the purposes of the association. The rent, and the servants who had charge of the premises, were paid out of a common fund, to which the lessees, and many other members of the association subscribed, for the purpose of carrying out the objects of the association. Various members of the association transacted the business of the association upon the premises, and the lessees, when in *London*, resorted to them daily, and transacted there, partly the business of the association, and partly their own. The revising barrister having decided that the lessees occupied the premises as tenants, and that the other members of the association did not jointly occupy as tenants with the lessees — *Held*, that as, upon the facts stated, the

lessees had the right to occupy, and there was nothing to shew that they did not occupy, the Court could not do otherwise than affirm the decision. *Lockett v. Bright*, Page 456

(Lodger.)

4. The appellant rented two floors in a house, in which the landlord occupied the shop and first floor, residing therein with his family. The appellant had exclusive control over the rooms occupied by him, and kept the keys thereof. He had also a latch-key to the street door, but this was sometimes fastened by a lock, of which he had no key, and then he entered the house through the shop. *Held*, that he had not an exclusive occupation of any premises, as owner or tenant, within the meaning of stat. 2 W. 4. c. 45. s. 27., but merely a limited enjoyment as an inmate or lodger. *Pitts v. Smedley*, 196
5. A. exclusively occupied the whole of the second floor of a house, as tenant to one *Knight*, who also resided in the house, the outer door of which was kept closed, both the landlord and A. having a key of such door. *Held*, that A. was a lodger only, and did not occupy premises as tenant, within stat. 2 W. 4. c. 45. s. 27. *Wansey v. Perkins* (Hill's Case), 252
6. A person having the separate and exclusive occupation of apartments in a house, of which apartments he has the key, and having

also a separate key for his own use of the outer door, the landlord of the house not residing therein, nor occupying any part of it, is an occupier, as tenant, of a house, within the meaning of stat. 2 W. 4. c. 45. s. 27. *Score v. Huggett*, Page 198

(b) Nature of Premises.

("House.")

*Vid. supra*, (a) 4, 5, 6.

1. A building, containing a ground floor, which was used as a cow-house, and an upper chamber, having a fire-place and a window, and furnished with a bed and chairs, where a party resided and slept, is a house, within the meaning of stat. 2 W. 3. c. 45. s. 27. *Nunn v. Denton*, 178
2. A building calculated for a dwelling-house, and which had been once used as such, was occupied by the tenant in possession, partly for warehousing goods, and partly for a sale-room, some of the upstairs apartments being let off to be used as workshops. *Held*, that it was properly described in the list of voters as a "house," within stat. 2 W. 4. c. 45. s. 27. *Daniel v. Coulsting*, 230

("Other Building.")

3. A cow-house, or stable, substantially built of stone, the roof of which is tiled, having a door with a lock and key, and being suitable for the purpose

for which it is used, and also conveniently placed for the occupation of the claimant's land, is a building within the meaning of the words "other building," in the 27th section of the Reform Act. *Whitmore v. the Town Clerk of Wenlock*, Page 10

4. A room in a factory, being a distinct or separate portion thereof, of which the tenant had the exclusive use, and also the key of the door: *Held*, to be a building within 2 W. 4. c. 45. s. 27.

*Held* also, that the fact of the landlord contracting to furnish, and furnishing power from a steam-engine, to work a spinning-machine in such room, in common with machines in other rooms in the factory, did not destroy the exclusive character of such occupation. *Wright v. The Town Clerk of Stockport*. 32

(c) *Joinder of Separate Buildings.*

A claimant cannot join together two separate buildings, in order to make up the value required to confer a vote for a city or borough, under the 27th section of the stat. 2 W. 4. c. 45. *Dewhurst v. Fielden*, 274

(d) *Buildings within the Curtilage.*

The appellant occupied a house and shop, separated from each other by a yard, enclosed all round, save but for an open passage, communicating with the street. *Held*, that such house and shop

were not within the same curtilage, and therefore could not be joined together so as to constitute one entire qualification, within the meaning of the 27th section of the Reform Act. *Powell v. Price*. Page 586

(e) *Value of Premises.*

1. Whether premises are of the clear yearly value of 10*l.*, within the meaning of 2 W. 4. c. 45. s. 27., is a question of fact, upon which the revising barrister must decide for himself.

Per *Erle J.*, the fair principle in ascertaining the value is, to inquire what the premises would let for to a tenant, and deduct therefrom what a tenant would ordinarily have to pay. *Coogan v. Luckett*, 447

2. The fair annual rent of premises is the proper criterion of their "clear yearly value," within stat. 2 W. 4. c. 45. s. 27., without making any deductions for landlord's repairs or insurance. *Colvill v. Wood*. 483

(f) *Being rated, and Payment of Rates.*

1. Where a rate bears upon its face the name of the occupier, the premises for which he is rated, the rateable value thereof, and the amount of the rate, such rating is sufficient within the 27th section of the Reform Act.

Payment of the entire rate by any of the parties jointly rated, is

a payment by each of the joint-occupiers of his respective rate, within the meaning of the same section. *Wright v. The Town Clerk of Stockport*, Page 32

2. When a tenant was rated for premises, the rates of which were paid by government, in part remuneration for the tenant's services. *Held*, that as he was liable, and the payment was made on his account, by those whom he procured to make such payment, by giving value for it, the payment was made by him, within the meaning of 2 *Will.* 4. c. 45. s. 27., and 6 *Vict.* c. 18. s. 75. *Hughes v. The Overseers of Chatham*, 51

3. The name of the occupier of the house No. 3, *Golden Lane*, was inserted in the rate-book by mistake, as the occupier of No. 4. Under an agreement with the tenant, the landlord had paid all the rates and taxes due in respect of No. 3, and the tenant had paid the landlord all his rent. *Held*, that the tenant had been *bonâ fide* called upon to pay the rate by the insertion of his name in the rate-book, and had *bonâ fide* paid it, through his landlord, within the meaning of stat. 6 *Vict.* c. 18. s. 75.

*Semble*, that the tenant was rated within the meaning of stat. 2 *Will.* 4. c. 45, s. 27., notwithstanding No. 3 was described as No. 4; but

*Held*, that at all events, the "inaccurate description" was

cured by stat. 6 *Vict.* c. 18. s. 75. *Cook v. Lockett*, Page 432

4. Premises in *St. Michael, Lichfield*, being jointly occupied by a father and son, three rates were made for the relief of the poor of the parish, in the year ending *July*, 1844.

In the third rate, the names of father and son were inserted, but the name of the son was left out of the first two rates, the overseers not being aware, until after payment of the first and second rates, that there was a joint occupation of the premises, although the son had paid the first and second rates with his own hand to the collector.

*Held*, that the son was not entitled to be registered, not having been on the two first rates, nor *bonâ fide* called upon to pay them.

*Held*, also, that there was no misnomer, or inaccurate or insufficient description of the person occupying, within the meaning of stat. 6 *Vict.* c. 18. s. 75. *Moss v. The Overseers of St. Michael, Lichfield*, 184

5. The name of the landlord of a house was on the rate, with the house, &c., opposite to it, and the tenant's name was under that of the landlord, but nothing was carried out against the name of the tenant, nor were the two names connected by a bracket or otherwise. *Held*, that the tenant was rated for the house. *Judson v. Lockett*, 490

6. The name of an occupying tenant of a house was inserted in the

rate-book between that of his landlord, who was rated for the house in question, and that of *A. B.*, but there appeared nothing opposite the tenant's name in the other columns of the rate, nor was there any bracket connecting his name with that of the landlord, though the figure 2 was placed before the landlord's name, and the figure 3 before the name of *A. B.* *Held*, that the tenant was sufficiently rated for the house.

At the revision, one of the parochial officers stated, that the tenant's name had been placed upon the rate in consequence of his having made a claim to be rated, but without any intention to rate him for any thing. *Held*, that as the question of rating was one which ought to be decided by an inspection of the rate itself, any evidence of the intention with which it was made, should have been rejected. *Pariente v. Luckett*,  
Page 441

(g) *Claim to be rated.*

1. A claim to be rated under stat. 2 *W. 4. c. 45.*, is only good for the rate for the time being.

Therefore, where a party claimed to be put upon the rate in *July 1837*, and the overseers neglected to do so, the Court held, that, as there were subsequent rates in respect of which he made no claim, he was not to be deemed to be rated during the continuance of those rates, and had no right to

vote. *Wansey v. Perkins* (Lockey's Case),  
Page 249

2. Until a rate be perfected by publication and allowance, the last valid rate made in the parish continues in force.

Therefore, where a rate was made under a local act for thirteen weeks, from the 16th of *September* till the 16th of *December*, and another rate was made on the 23d of *December*, which was not published till the 5th of *January* following. *Held*, that an occupier claiming on the 27th of *December* to be put upon the rate for the time being, pursuant to stat. *W. 2. 4 c. 45. s. 30.*, must be deemed to have been rated to the *September* rate, as the rate for the time being. *Bushell v. Luckett*,  
398

“ *Tender.* ”

3. The appellant not being rated to the poor for the house which he occupied, delivered to the overseer a notice of claim to be rated, at the same time asking him whether any rates were due. The overseer replied, he did not know, and the appellant, who had more money in his pocket than was sufficient to pay the rates, said, “ If there are, I am prepared to pay them.” The overseer then said, “ I will see to it ; ” upon which the appellant went away. *Held*, that this was not a tender of the amount due, within the meaning of stat. 2 *W. c. 45. s. 30.* . *Bishop v. Smedley*,  
384



(h) *Residence.*

The appellant, a freeman of the borough of *Tewkesbury*, resided with his wife and family, and carried on business as a wine-merchant at *Gloucester*, more than seven miles from *Tewkesbury*. In order to claim a vote for the borough, he paid ninepence a week for the use of a furnished bedroom, and a dark closet, in a friend's house at *Tewkesbury*. He had the key of the closet, and between *January* and *July* kept some wine samples in it. During that time he slept in the bedroom twelve times, and in the course of the year, ending *July* 1844, between fifteen and twenty times; but he never took his meals in the house, except as a guest. *Held*, that the appellant had not resided in *Tewkesbury* within the meaning of the stat. 2 *W.* 4. c. 45. s. 32. *Whithorn v. Thomas*, Page 125

(i) *Admission of Freemen in respect of Birth.*

Before the passing of the Reform Act, the right of voting in the borough of *Malmesbury* was vested in the "capital burgesses" only. The corporation of *M.* consists of four classes of burgesses; the first, called "capital burgesses;" the second, "assistant burgesses;" the third, "landholders;" and the fourth, "free burgesses or commoners;" burgesses of the fourth class being

qualified for admission thereto (*inter alia*), in respect of birth. A vacancy in the third class is supplied from the fourth by seniority; and vacancies in the second and first classes are filled up from the third and second classes by election.

*P.*, prior to 1st *March*, 1831, had been admitted a "free burgess" in respect of birth, and was subsequently elected a "capital burgess." *Held*, that he was not disqualified by the proviso in the 32nd section of the Reform Act, as "elected otherwise than in respect of birth," birth having made him eligible into the first class of burgesses. *Gale v. Chubb*, Page 544

(j) *Freemen and Liverymen in London.*

Freemen and liverymen of the city of *London* admitted to their freedom by purchase since the 1st of *March*, 1831, are entitled to be registered and to vote, notwithstanding the proviso in the 32d section of the Reform Act, which applies only to burgesses or freemen in other cities or boroughs. *Croucher v. Browne*, 388

(k) *Reserved Rights.*

1. To entitle a person to vote as an inhabitant householder, potwaller, or scot and lot voter, under stat. 2 *W.* 4. c. 45. s. 33., he must retain the identical qualification which



he had when the Reform Act passed.

Where, therefore, a person claimed to vote for the borough of *Northampton*, as a six months' inhabitant householder, and it appeared that he had a right to vote as such on 7th of *June* 1832, but that in *October* 1832, he ceased to reside at *Northampton*, and went to reside at *Bedford*, where he remained for fourteen weeks:—

*Held*, that there must be a continuous qualification, and that as the claimant had once ceased to reside, and thereby lost his right to vote, he could not acquire a new qualification by returning to *Northampton*, and becoming again an inhabitant householder. *Jefrey v. Kitchener*, Page 210

2. Before the Reform Act, the right of voting in the borough of *Warwick*, was in inhabitants paying scot and lot. Every inhabitant who had been duly rated for six calendar months next before an election, and had paid all rates due from him before the actual giving of his vote, was entitled to vote as such scot and lot voter.

A scot and lot voter, who had been on the register every year since the Reform Act, with the exception of 1845, and who had always resided within the borough, and been rated in respect of a house therein, paid all the rates due from him on the 31st *July*, 1846. *Held*, that although his right to be registered had been suspended, his qualification as an

elector according to the usages of the borough continued; and, consequently, that the omission of his name from the register for one year, did not destroy the right reserved to him by stat. 2 *Will.* 4. c. 45. s. 33. *Nicks v. Field*, Page 566

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**SCOT AND LOT VOTERS.**

**SCOT AND LOT VOTERS.**

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